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PRESENT PROBLEMS OF CONSTITUTIONAL LAW.[1]

TEN years ago, one was accustomed to hear the proposition confidently advanced and stoutly maintained that the period of development of constitutional law had closed and that the civilized world was in the period of administrative development. I knew then that this proposition, if not an error, was at least an exaggeration, and everybody knows it now. If the devotees of administrative law and theory had been content to say that constitutional law had reached a much fuller development than administrative law and that its unsolved problems, though highly important, were fewer in number than those of administrative law, no fault could have been found, or could now be found, with the contention. But the events of the last six years especially have shown that the work of the constitution makers is far from completion, and that we have entered, or are about to enter, upon a new period of constitutional development. In view of this situation, it is my purpose to discuss, as far as is possible in the limits of a single paper, a few of the more important problems which await solution or demand a new solution.

All questions of constitutional law, as of political science, may be classified under three grand divisions, *viz.* sovereignty, government and liberty.

I will not enter upon a philosophical treatment of the term and concept, sovereignty. I will only say that in every constitution

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there should be a workable provision for its own amendment, and that in every perfect, or anything like perfect, constitution, this provision should constitute, for accomplishing this purpose, organs which shall be separate and distinct from, and supreme over, the organs of the government, which shall truly represent the reason and the will of the political society and the political power upon which the constitution rests, and which shall operate according to methods and majorities which will always register the well-considered purpose of that society and that power. I hold the first problem of the constitutional law of the present to be the fashioning of the clause of amendment so as to correspond with these principles.

If we examine the constitutions of the great states of the world and contemplate their history during the last twenty-five years, we shall see at once how pressing this necessity is.

Leaving out of account the Austro-Hungarian *Ausgleich*, as partaking more of the character of a treaty than of a constitution, we shall find that the constitutions of three of these states, *viz.* Spain, Italy and Hungary, contain no provisions at all for their own amendment; that all the rest, excepting France and Switzerland, use exclusively the organs of their governments for making constitutional changes; that France uses the personnel of her legislature, but under different organization, for this purpose; that Switzerland accords her legislature a power of initiating such changes, which in practice frequently creates embarrassments to the prompt and certain action of the popular will; and finally that all, except Great Britain, France, Switzerland and perhaps Norway, require such majorities for action as to make these provisions practically unworkable, except in times of great excitement — the very moments, if any, when they should not work.

Let us take, for example, the provision of amendment in the Constitution of the United States, as being the one in which the majority of this audience is probably most interested, and as being the provision made by that great state which more than any other professes to develop through the methods of gradual and peaceable reform rather than through the European and South American methods of revolution and reaction. This constitution was framed originally, without any warrant of existing law, by a

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general convention of delegates selected by the legislatures of the different States of the Confederation, except the legislature of Rhode Island; and it was adopted originally, also without warrant of any existing law, by conventions of delegates chosen by the people within these several States. The general convention proposed, or rather ordained, and that too without any warrant of existing law, that the proposed constitution should go into operation when ratified by conventions of the people in nine of the thirteen States of the Confederation, and it actually went into operation when conventions of the people in only eleven of these States had ratified it.

I shall not enter upon any criticism or any scientific explanation of these procedures. I will only say that to my mind they were entirely extra-legal, and therefore revolutionary, but were necessary because of the absence of any workable method of amendment in the Articles of Confederation.

Warned by this experience, the framers of the new constitution wrote a method of amendment into this instrument which they expected could be and would be effectively exercised.

It *was* exercised, first, to limit the powers of the central government in behalf of the individual, to perfect the realm of individual immunity against the powers of the central government. This was in the line of true progress. It was applied, in the second place, in behalf of the exemption of the States from the jurisdiction of the United States courts, which was the first result in constitutional law of the reaction of 1793 against the national movement of 1787. And it was employed, in the third place, to cure some of the defects in the election of the President and Vice-President. Then for more than sixty years, while the mightiest changes were being realized in the social, political, industrial, commercial and educational conditions of the country, not one trace of any of these changes found its way into the constitutional law of the nation.

We may say that during these years the main direction of the social, political and economic forces down beneath the constitution was, whether consciously recognized or not, towards limiting the powers of the States of the Union in behalf of the powers of the central government and the liberty of the individual. The

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pressure of the movement was so strongly felt by a great portion of the people of the country, and so strongly resisted by another great portion, that it led to the appeal to arms of 1861. The method of amendment, intended for every exigency, had proved itself unequal to the emergency, and when employed again in the last three constitutional changes it simply registered the results of battle. In the main, what was then and thus accomplished was correct in substance; but the method which was necessitated showed again that nothing like the perfect principle and form of constitutional amendment had been reached.

And now, again, for thirty-five years mighty changes have been wrought in the structure of our political and civil society and in our commercial and industrial relations, and yet not one of them has been registered, by the process of amendment, in our constitutional law.

From this brief review, it seems entirely manifest that the method of amendment provided in the Constitution of the United States is ordinarily unworkable, and that the first problem of the constitutional law of the present in this country, as well as in almost all other countries, is the revision of the provision for constitutional amendment. Let us now scrutinize a little more closely the details of the provision in order to make its defects clear and definite. At the very first glance we discover that really four methods of amendment are legalized by the provision. The first method authorizes the initiation of an amendment by a constitutional convention of the United States, called by Congress on demand of the legislatures of two-thirds of the States of the Union, and ratification by conventions of the people in three-fourths of the States. The second method authorizes the initiation of an amendment in the same manner and by the same body as the first and ratification by the legislatures of three-fourths of the States. The third method authorizes initiation of the amendment by a two-thirds vote in both houses of Congress and ratification by conventions of the people in three-fourths of the States. And the fourth method authorizes initiation of the amendment in the same manner and by the same body as the third and ratification by the legislatures of three-fourths of the States. Only one of these methods, however, has been employed, *viz.*

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the last. Convenience has dictated this, and convenience is ordinarily stronger than principle in a country which moves so fast as ours.

Now it is evident that what makes these methods of amendment practically almost unworkable is the extraordinary majorities required both in the initiating and in the ratifying bodies. The idea was, of course, to make constitutional change conservative. This was indeed a laudable purpose; but such conservatism is a dangerous thing when it is mechanical and artificial, and it always becomes such when it permanently prevents the will of the undoubted permanent majority of the whole people in a democratic republic from realizing its well considered and well determined purposes in its organic law. There is a natural way to secure and preserve true conservatism, a way which does not contradict the fundamental principle of majority right, and that way should always be followed.

This matter of the majority is not, however, the sole element in the problem of a proper provision for constitutional amendment. There are several other points of great importance. One I have already adverted to, *viz.* the error in sound political science of using the governmental organs for the making of constitutional law. To illustrate this, let us consider the process of constitutional amendment in the German imperial constitution. According to the provision of amendment in that instrument, constitutional law can be made by a simple majority vote in the *Reichstag* sustained by forty-five of the fifty-eight voices in the *Bundesrath*, while the two bodies by simple majority vote in each make ordinary law. Now it is the impulse of the *Reichstag* to call every measure which it desires to see passed ordinary law, and it is the impulse of the minority in the *Bundesrath* to call every measure which it desires to defeat constitutional law, and the constitution provides no organ for determining a hermeneutical contest over this point, unless the Emperor's power of promulgating the laws covers the question. Some of the commentators upon that instrument contend that it does. Some say that in the exercise of his power of promulgating the laws the Emperor may look into the content of any measure, and that, if in his opinion the measure is one of constitutional law and has not received the proper major-

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ity in the *Bundesrath* for making constitutional change, he may refuse promulgation. But the *Reichstag* does not accept this doctrine. Moreover, it is the practice in the imperial legislature to allow the passage by that body of a law which is not authorized by any power at the time vested in that body by the constitution, provided the law has received in the *Bundesrath* the majority necessary to make a constitutional change. Such a law is not inserted in the text of the constitution as an amendment to that instrument, but is incorporated in the ordinary statutes; and the question at once arises, how such a law may be repealed, whether by the method for making or repealing ordinary law or by that necessary for making constitutional changes.

Under such a practice the whole question as to what is constitutional law and what is ordinary law becomes confused. From the point of view of written constitutions, constitutional law is the law provided in the constitution. From the point of view of unwritten constitutions, on the other hand, constitutional law is that part of the law which ought to be regarded as fundamental and organic. There is sufficient opportunity for difference of opinion in regard to the first kind of constitutional law, but in regard to the second there is no complete agreement on the part of any two minds. Of course the two kinds of constitutional law ought to agree exactly. What, from a true philosophical point of view, is fundamental and organic ought to be in the constitution, and, *vice versa*, every provision included in the constitution ought to be fundamental and organic. But in practice there is a wide difference, as to result, between the interpretation of a written instrument and the formation of individual or popular or legislative or executive opinion as to what part of the law ought to be regarded as fundamental and organic and what part as ordinary. In the first process there is some measure of certainty and continuity; in the second, on the other hand, there is very little. And when the two processes of determination are authorized in the same political system, they are bound to produce inextricable confusion. The root of the difficulty is to be found in making the governmental organs the organs for constitutional amendment. The *personnel* of the government, especially of the legislature, may be used for making constitutional

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law. It would be inconvenient, and perhaps injurious, if it could not be. But it is not necessary that this should be effected through the governmental *organizations*. That personnel may be specially organized for this purpose, as the French constitution provides, by uniting all the members of both legislative chambers in one national constitutional convention with constituent power. The body authorized to make constitutional law and constitutional law only being entirely distinct from the body authorized to make ordinary law and ordinary law only, even though composed of the same individual persons, there can be no possibility of confounding the two kinds of law.

Finally, there is a grave problem of constitutional law involved in the exception, to be found in some of the constitutions, of certain subjects from the general power of amendment. This occurs usually in the constitutions of those states which have the federal form of government, as in the constitutions of the United States and of the German Empire, where the existing relations of representation of the States of these Unions in the upper chamber of the legislature is excepted from the ordinary course of amendment and made subject to a still more impossible process. And strangely, and in an even more exaggerated form, this defect is to be found in the French constitution, where two subjects are excepted from any method of amendment whatsoever, *viz.* the form of the government and the disqualification of the descendants of former reigning houses for the presidency of the Republic. These exceptions to the power of the legal sovereign in amendment are rotten spots in any constitution, and if not rooted out they will spread until their mouldering influence will be felt throughout the entire system.

The practical and all-important question, however, is as to the way in which they can be eradicated, regularly and lawfully, and without recourse to revolutionary means. Take again for example the Constitution of the United States, which declares, in the article of amendment, that "no State, without its consent, shall be deprived of its equal suffrage in the Senate." This means, of course, that if the attempt should be made to reduce the representation of any State in the Senate in relation to that of the other States, by the process of constitutional amendment,

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this can be effected only with the consent of the legislature of, or of the convention in, the State whose relative representation it is proposed to reduce, together with the consent of one or the other of these bodies in enough of the other States to make out a three-quarter majority of the whole number; and that if the attempt should be made to increase the relative representation of any State, this can be effected only with the consent of every other State of the Union, given through its legislature or convention.

There is thus, theoretically, a way provided for expunging from the Constitution this exception to the ordinary operation of the legal sovereign, the amending power; but practically it is utterly unworkable. If we are ever to rid ourselves of this obstacle we must find some other way than that which I have just outlined. But is there any other legal way? Can the amending clause itself be revised by the ordinary course of amendment so as to omit the exception in behalf of the equal representation of the States in the Senate? It certainly can be so revised as to anything and everything else. But I am quite persuaded that the framers of the constitution never intended to provide any means whereby this exception could be set aside. I am quite sure that they intentionally placed this obstacle in the way of the legal sovereign, as they organized it for ordinary action. I do not think that they realized the fact that they were sowing the seeds of revolution upon this subject by erecting an insurmountable barrier to regular constitutional progress concerning it. The great, natural, universal and irresistible principle of development was not then understood as now. Men really believed, at that stage in the growth of philosophic thought, that they could construct for all time institutions which would need no change or improvement.

There is, indeed, good ground in political philosophy for holding that the amending clause in a constitution may itself be revised by the general process provided therein. These grounds are that there cannot logically be two legal sovereigns within a constitution any more than there can be two original sovereigns behind the constitution, and that there cannot logically be any exceptions from the power of the legal sovereign any more than

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there can be from the power of the original sovereign. Different methods of governmental action in regard to the same subject, and exceptions from the powers of the government, are all scientifically legitimate, but the exercise of sovereignty is an entirely different matter. One body and only one can possess it at any given time within a given state, and from its operation nothing whatsoever can logically be excepted. But when we shift from the legal to the political ground in respect to this subject are we not contemplating a revolutionary act? I think this must be acknowledged. It must be conceded that we are contemplating the same kind of a revolutionary act as that committed by the national constitutional convention of 1787 and the ratifying conventions within the States of the Confederation. If that was justifiable, this would be, and upon exactly the same ground, *viz.* that existing legality upon this subject does not comport with the social, political and economic conditions of a national democratic state, but contradicts them in an unendurable way and to an unendurable extent. Sound political theory demands that the amending power within the constitution, the legal sovereign, should be an organization faithfully representing the original sovereign behind the constitution; separate from and independent of the powers of the government, and supreme over these powers and over the liberty of the individual; subject to no limitations or exceptions; sufficiently facile in its action to meet all important exigencies and, when using the governmental organs at all in the making of constitutional law, using them in a ministerial but not in a discretionary capacity. And sound constitutional law demands the same things. Without them the system of constitutional government and constitutional liberty will not be able to stand in permanence. The invincible principle of development will force changes upon any and every constitutional system, as upon everything else in the universe; and if these changes cannot be made by amendment, by the legal sovereign, they will inevitably be made by the government or some part of the government — in Europe by the legislature as a rule, and in the United States by judicial approval of legislative or executive acts. But whichsoever of these two methods be followed, it comes to the same thing, *viz.* gradual governmental usurpation against

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the limitations of the constitution, the ultimate destruction of the constitutional system.

These are the considerations which lead me to hold that the first great problem, logically, of the constitutional law of the present is the construction of a proper provision for amendment, which shall have the qualities which I have just outlined. Not a single great state in the world has such a provision in its constitution, and not a single one has anything approaching it, except, as I have said, France and Switzerland. Of these two, Switzerland has come nearest to it in the provision which allows an amendment to be proposed by fifty thousand Swiss voters and to be ratified and adopted by a majority of the Swiss voters, provided this national majority includes a majority of the voters in a majority of the cantons. The Swiss process of amendment uses the governmental organs at one or two points only, and then only in a ministerial way. The great defect here is that throughout the whole process there is no place nor opportunity for any sufficient discussion of the projected amendment. Such a defect is fatal to any sound development in human affairs.

The second great problem of the constitutional law of the present is, in my judgment, the proper construction of the upper legislative chamber.

With the exception of the princely power this is the oldest among national political institutions. The lower chamber in the legislatures of the present is a modern institution, based upon manhood suffrage or something very near manhood suffrage, and upon representation according to numbers. The senates, on the other hand, are in most cases relics of mediævalism, based upon a variety of sources as to tenure, and with little pretense of a distribution of representation according to modern principles. These defects are to be found even in the senates of some states which have been founded since the close of the middle ages. I think it may be broadly affirmed that, of the seventeen states of the civilized world worthy of mention as having a constitutional law, only four have solved the problem of the upper legislative chamber with anything like a fulfilment of the demands of modern theory or modern conditions; and these four are not states of the first rank in power. They

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are Sweden, Norway, the Netherlands and Belgium. Moreover these four are all states with centralized governments, that is, states which are better situated than those having federal governments for the solving of this problem. Of these four, Sweden has come nearest, in my judgment, to the ideal modern solution, providing in its constitution for the election of the senators by the provincial assemblies and the municipal assemblies of such cities as are not under provincial government (all of which bodies are elected by the voters) and distributing the representation in the Senate according to population. This is both conservative and democratic: conservative in the method of the election, and democratic in the method of the distribution of the representation. In the Swedish legislature there is also absolute parity of powers between the two houses, both in the initiation and passage of legislation. Both houses come ultimately from the people, both represent the whole people, both rest upon the same principle of distribution of seats, *viz.* population, and both exercise the same power in legislation, fulfilling thus the four chief requirements for the senate of a modern state.

Apparently the Norwegian Senate approaches as near the solution of the modern problem as the Swedish. But a little consideration of the details will show that this is not quite true. The Norwegians elect all of their legislators as one body; and when they all assemble as one body, the separation into two bodies is effected by drawing lots, one-fourth of the whole number constituting in this manner the Senate and three-fourths the other chamber. The main defect in this method of organizing a senate consists in the fact that it will be composed entirely of members coming from parliamentary districts not represented at all in the other chamber, and *vice versa;* that is, three-fourths of the parliamentary districts are represented in one chamber only and one-fourth in the other only. This tends to the sectionalizing of views and to the weakening of the national consciousness and spirit, or at least to the hindering of the development of the national consciousness and spirit. Then there is another defect. The one-fourth selected in this way and representing directly only one-fourth of the parliamentary districts can not maintain a parity of power with the other chamber composed of members

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directly representing three-fourths of these districts. This is manifest in the provision of the constitution itself, respecting the mode of legislation. If the two chambers cannot agree upon a project of law, the constitution orders that they shall, at last, unite in the one original assembly from which they proceeded and determine the matter there. This means, of course, that after a certain time the Senate must practically always succumb to the will of the other chamber. These are serious defects, so serious as almost to take Norway out of the category of states that have made most progress in the solution of the problem.

The members of the Netherland Senate are chosen in the same manner and by the same kind of bodies as those of the Swedish upper chamber; but in the distribution of the seats some consideration is paid to the provincial lines, the distribution not being in exact accord with the principle of population, though not far away from it.

Finally, in the Belgian system, there is a complexity both in the method of choosing the senators and in the distribution of the seats which amounts in each respect to a defect. Most of the senators are chosen directly by the voters, and in the election of these senators, two lower-chamber districts constitute one senatorial district. This is simple and democratic, although somewhat radical. The other seats are filled by the provincial assemblies, and in the distribution of these seats among the several provinces much consideration is had to the provincial lines, the less populous provinces being favored. The purpose of this device is to offset the radical method by which most of the senators are elected, *viz.* the direct vote. This is certainly a makeshift. It would have been far more in accord with sound theory to have provided for the choice of all the senators by the provincial assemblies, while distributing the seats among the provinces according to population. There is nothing necessarily undemocratic in the practice of indirect election, but it is quite undemocratic to distribute the seats in any legislative body except in accordance with the principle of population, or at least in a manner approaching that principle.

When now we turn to the construction of the senate in the other thirteen constitutions, we find ourselves in the midst of a chaos in

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the practice with no consistent principle to guide us. We find seats held by virtue of hereditary right, as most largely in the British, Austrian and Hungarian constitutions, but partly in the Spanish constitution also; a system which is certainly mediæval both in origin and spirit. In the same constitutions we find seats held by virtue of office; a system which, besides being for the most part mediæval, conflicts with the modern principle of the incompatibility of office with legislative mandate. We find seats held, again, by royal appointment, as partly in the four systems just mentioned and also in that of Denmark, almost exclusively in the German *Bundesrath*, and exclusively (excepting the seats of the princes of the royal house) in the Italian and Portuguese Senates. Such an appointed Senate is, as a rule, the weakest sort of upper house, being generally a sort of appendage to the crown, affording it no support, but bound to go down with it under popular assault. Finally, we find seats held by election, almost always in the indirect form, as partly in the systems of Spain, Hungary, Denmark and Great Britain, and exclusively in the systems of France, Switzerland and the American states. The elective element in the British House of Lords and in the Hungarian *Magnaten-Tafel* is slight. In the Spanish system one-half of the senators are elected for a term of ten years; and in the Danish system fifty-four of the sixty-six members are elected for a term of eight years. These two countries are headed in the right direction in so far as the senatorial tenure is concerned. But in neither of these cases, and in none of the cases where election is the sole source of the tenure (except, of course, the first four already treated of), and, of course, in none of the other cases, is there any approach to the modern democratic principle of distribution in proportion to population.

It is about as certain as anything human can be that all the species of senatorial tenure except that by election will pass away. It may be expected that the tenure by hereditary right in Great Britain and that by royal appointment in Germany will be the last to yield. But they must all go sooner or later; and it is one of the great problems of constitutional law in all of these states to find the proper and natural substitutes for these antiquated forms or modern makeshifts. It is also a great problem in those

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states which have already established the elective tenure for a portion of their senators so to reform the senatorial electoral bodies as to make them more representative of modern conditions. As I have said, there is no sound objection in modern political theory to the indirect election of senators; but the electoral bodies must be truly representative of the original voters, and they must exercise power in the election proportionate to the population which they represent. This is not the case in any of these states. In all of them the original electorate for the senators is much narrower than for the members of the other chamber; and the weight exercised by the different electoral colleges is far from being proportionate to the population of the districts for which they act.

In the five states with republican governments, the ultimate source of the senatorial tenure is naturally the same as that of the membership of the other chamber; and in so far as that point is concerned, they may be said to have solved this part of the senatorial problem. But when we come to the provisions of these constitutions which relate to the distribution of the senatorial representation, we find ourselves confronted with one of the gravest questions of their constitutional law.

Let us consider briefly the facts in each case, beginning with France. Possessing a centralized government, France has not the same reason for making concessions to the lines of local government or administration as have states with systems of federal government. The extremes in the senatorial representation are found in the *départements* of the Hautes Alpes and of the Seine. From the point of view of population, the mountaineers of the former district are about six times more strongly represented in the Senate than the inhabitants of the highly civilized city of Paris. The average discrepancy, however, is not at all so great. Nevertheless it is true that a minority of the population of France is represented by a majority of the seats in the Senate. It is a minority not far removed from the middle line, but still always a minority. It may also be said that the advantage lies, on the whole, rather with the *départements* which are moderately populous, although the greatest advantage lies with the least populous, and the greatest disadvantage with the most populous. While

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there is here a problem for the French statesmen, it is not of a very serious nature. More serious for them is the problem of regulating the weight of the communes in the senatorial electoral college for each *département;* for here the smaller communes are as a rule much over-represented.

When we turn from France to the states with federal governments, we become immediately aware that, in the distribution of the senatorial seats, other considerations than the modern doctrine of distribution according to population have been in all cases determinant.

In the first place, in democratic Switzerland, we find that the canton Uri is about thirty times more strongly represented in the *Ständerath*, or Senate, than is the canton Bern, and that the twelve least populous cantons, containing not quite one-third of the population of the whole of Switzerland, are represented in the Senate by a majority of the voices.

Secondly, in the leading state of South America, Brazil, and in the leading state of Central America, Mexico, we find about the same conditions. The Brazilian commonwealth of Matto Grosso is, from the point of view of population, about thirty-four times more strongly represented in the national Senate than the rich and populous commonwealth of Minas Geraes; and the eleven least populous commonwealths of the Brazilian republic, containing about three million inhabitants, are represented by a majority of the voices in the national Senate, while the other ten commonwealths with a population of almost twelve millions are represented by a minority of the senatorial seats. Likewise in the Mexican republic, the commonwealth of Colima is, from the point of view of population, about eighteen times more strongly represented in the national Senate than the commonwealth of Jalisco; and the fifteen least populous commonwealths, containing less than three and a half million inhabitants, are represented in the Senate by a majority of the voices, while the thirteen more populous commonwealths, with a population of more than ten millions, are represented by a minority of the senatorial voices.

But it is the democratic republic of North America which exhibits the most thoroughgoing rotten-borough Senate of any state in the civilized world. In this Union the smallest com-

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monwealth, from the point of view of population, is Nevada with 42,335 inhabitants, and the largest is New York with 7,268,894.[1] From the point of view of representation according to numbers, the inhabitants of Nevada are nearly one hundred and seventy-two times more strongly represented than the inhabitants of New York. Again, there are now forty-five commonwealths in this Union with a population of over seventy-six millions. Of this population about fourteen millions reside in the twenty-three least populous commonwealths, and over sixty-two millions in the twenty-two more populous commonwealths. That is, fourteen millions of people are represented in the United States Senate by forty-six senators, while more than sixty-two millions are represented by only forty-four senators.

Of course it may be said, and it is said, that in states with systems of federal government the members of the national senate do not represent the people, but the commonwealths of the Union, and that, therefore, the principle of representation according to population does not apply to the senates of such states. But what, after all, is a commonwealth or State in a democratic republic with a federal government? Is it anything more than the organization of the people within a given district for their autonomous local government? And is there any sound reason why a few people so organized in one district should be equally represented in either house of the national Congress with a great many more people organized in another district for the same purpose? If it were always true that the smaller population possessed all the elements of intellectual and moral culture to a higher degree than the larger, it might be held, perhaps, as a principle of political ethics that the representation of the smaller number should be relatively stronger than that of the larger. But who will say, for example, that the peasants and mountaineers of Uri are superior in knowledge and virtue to the citizens of Bern, or the miners of Nevada to the inhabitants of New York?

I understand only too well that there are still those who will say that the reason for the equal representation of the commonwealths in the national senate is that they are sovereign states, and that sovereignties are equal in representative right no matter

[1] According to the Census of 1900.

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what may be their relative strength in population or in any other element of power. My answer to this is, that this is a principle of international law, not of constitutional law; that the commonwealths in these four systems which we are considering are not sovereign states; that in two of them they never were sovereign states nor anything like sovereign states; that in one of these nations, Switzerland, the most of the cantons were once something like petty sovereignties under the *Eidgenossenschaft* and under the Confederation of 1815–48, but were deprived of that quality by the Swiss nation in 1848; and that in the other, the United States, thirteen of the commonwealths possessed something which they called sovereignty under the Articles of Confederation of 1781–89, but were deprived of that quality by the national popular movement of 1787, culminating in the establishment of the national Constitution instead of the quasi-international Articles of Confederation, and that by the trial of arms of 1861–65 the claim to sovereignty by any commonwealth of this Union was put forever to rest.

According to modern views, principles and conditions, no rule of distribution of legislative seats in either chamber except the rule of population can rightfully prevail in a national democratic republic, no matter whether the governmental system be centralized or federal. Some concessions can, of course, be made to administrative convenience, but they must never amount to the permanent investment of a minority of the people with a majority of the voices in either branch of the law-making body, especially where this minority and also the majority are sectional in their composition and not general. Even if we accept the doctrine of minority representation, it would not justify the practice of sectional overweight, which we are considering.

As I have indicated in another connection, it will not be easy to deal with this problem in the United States or in the German Empire. In the other states with federal governments this defect may be cured by the ordinary course of amendment, but in the United States and the German Empire this subject is excepted from the ordinary course of amendment and placed under the protection of a procedure which can, in all probability, never be applied so as to effect any change. Nevertheless, the question

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will have to be met, and the problem will have to be solved here as well as elsewhere. It may not be done, it probably cannot be done, with exact legality; but we have the precedent in American constitutional history for a convention of the United States acting with conventions of the people in nine-thirteenths of the commonwealths to disregard the prescripts of the existing law in the amendment or revision of the organic law. We can bring such bodies together by means and through forms already provided in the constitution, and we can go back to the principle, as in 1787, that they represent the sovereign behind the constitution and are not, therefore, bound by the exceptions from the legal power of amendment provided in the constitution. You may call this revolutionary. I think we shall have to concede the point; but it would be a revolution standing on the border line between original sovereign action and legal procedure, and would, probably, be as bloodless as that of 1787.

The third great problem of the constitutional law of the present is, as I conceive it, the fixing of the fundamental relation between the legislative and executive branches of the government. The experience of the world has developed three fundamental systems of practice in regard to this subject. We may term them the presidential system, the parliamentary system and the directorial system.

The principle of the first is substantial independence of the executive and of the legislature, both in tenure and procedure. The tenure of the executive does not, according to this principle, originate in the legislature, and cannot for merely political reasons be determined by the legislature; that is, the legislature cannot impeach, or require the resignation of, the executive or his ministers merely on account of political disagreement with them. Nor, on the other hand, does the tenure of the legislative members originate in the executive nor can the executive cut short their term by dissolution. Neither the executive nor any of his ministers have seat or voice or vote in the legislative chambers, but, on the other hand, the executive is furnished with a veto power upon all legislative acts, practically strong enough to secure his prerogatives against legislative encroachment.

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The principle of the second, the parliamentary system, is substantial harmony between the executive and the majority party in the legislature. This is established and maintained by the constitutional requirements that the executive shall take his ministers from the leadership of the majority party in the legislature or in the more popular chamber thereof, shall follow the advice of his ministers, and shall dismiss them from office, generally through the form of voluntary resignation, when they fail to receive the support of that majority upon fundamental questions, or else shall dissolve the legislature or the lower chamber thereof, and appeal to the voters, whose decision must be acquiesced in by all, to restore the lost harmony. Under this system the real executive is the ministry. It bears the responsibility for the executive acts. Its members have seat, voice and vote in the legislative chambers, but no veto upon legislative acts.

The principle of the third, the directorial system, is the complete subordination of the executive to the legislature, that is, complete control of the executive tenure by the legislature, entire responsibility of the executive to the legislature, no power in the executive to dissolve the legislature or either branch thereof, no seat, voice or vote in either of the legislative chambers except by order or permission of the chambers, and no veto upon legislative acts. On the other hand, while the executive is as a rule permitted to introduce measures into the legislature, their defeat or rejection does not call for the resignation of the directory or of that member of it particularly responsible for the project. He or they must simply submit to the will of the existing legislature in every case and go on under its instructions.

The presidential system goes naturally with the elected executive, the parliamentary with the hereditary executive, while the directorial system belongs scientifically nowhere. The directory is scientifically and historically discredited as an executive system. It exists in only one of the seventeen states which I have brought under this study, *viz.* Switzerland, although it seems to be on the way of establishment in one other, *viz.* Norway, where the successful insistence of the Norwegians that the king's ministers shall sit in the legislature and shall resign when out of harmony with the legislative majority, without according the

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king the power of dissolving the legislature and appealing to the voters to settle the question in a new parliamentary election, is certainly tending to make the ministry a directorial board, completely subject to the legislature. Switzerland being an internationally neutralized state may make experiments with a weak executive. For Norway such a situation is more dangerous. In both cases it seems to me an unsatisfactory solution of the executive problem and one which calls for revision.

Of the other fifteen states, all that have hereditary executives, except the German Empire, Austria and Hungary, have developed or are developing, substantially, the parliamentary system. They are, at least, all moving in the direction of the English model, and are destined to arrive, sooner or later, at something like the English result. All the road, however, from their present stage of development of the system to its ultimate form, will be strewn with problems; and their best course is to look to English experience and to follow, as nearly as somewhat different conditions will permit, in English footsteps. It is most important to kings and emperors themselves that they should recognize the fact that the parliamentary system of relations between the executive and the legislature is a necessary contrivance for reconciling modern political thought and modern political conditions with the hereditary tenure of the executive. If they resist too far its establishment and development, they will simply provoke a republican revolution which will sweep them away. The royal imperial houses of Hapsburg and Hohenzollern, old and powerful and popular as they are, cannot in the long run resist this movement. It is the greatest constitutional problem, from the point of view of their own interests, with which they have to deal, and it behooves them to devote themselves to its thorough comprehension and its rational and natural solution.

With the exception of Switzerland, which needs no further consideration, and of France, the states having elected executives follow the presidential system. This is natural and rational, and I consider that in these states the executive problem has been fairly solved to meet modern conditions and requirements. It is quite true that in the United States and Mexico the method of indirect election of the executive is criticised, and that in the

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practice of the United States the law for counting the electoral vote has, until recently, been quite faulty and is not yet entirely perfect. It is also true that some advantage might conceivably be gained by allowing the presence of the cabinet officers in the houses of Congress to explain proposed executive measures or even to propose administrative measures. But from the point of view of this paper these are matters of detail, and they cannot be discussed within its limits.

It is the French Republic which is confronted with the serious problem in regard to the executive and its relations to the legislature. The French Republic is attempting to work the system of parliamentary government with an elected executive. From the points of view of historical experience and sound theory this appears as an unnatural and, in the long run, unworkable combination. The real parliamentary system requires, as I have already remarked, not the complete subordination of the executive to the legislature, but harmony of action between the two and a power in the executive either to dismiss his ministers or dissolve the legislature in order to restore harmony upon important issues when it has been lost. No democratic people will entrust the executive with such power over the legislature, and if they would, the executive would not dare to use it. It requires all the historic power, prestige and mystical influences of the hereditary executive, the so-called sovereign, to exercise such a power. The French have attempted to help themselves over this difficulty by vesting the power to dissolve the Chamber of Deputies in the President with the consent of the Senate, the Senate itself not being made subject to executive dissolution. This may give the President a certain backing which may enable him to act occasionally. It did so in one or two early cases. But this is no fulfilment of the requirements of the system. The executive alone must have the power of dissolution over the entire legislature, or at least over the entire elected part of the legislature; and it is not sufficient that the executive shall have it over only one chamber of the legislature, and then only when sustained by the other chamber. Conflicts between the two chambers might be settled in this way, but not conflicts between the executive and the entire legislature, and the settlement of

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such conflicts is the prime purpose of the parliamentary system. When the relation prescribed by the French constitution was established, that instrument provided that the seventy-five senators, one-fourth of the whole number of senators, originally chosen by the national convention which framed and adopted the constitution, should hold for life, and that their successors should be chosen by the Senate itself and also hold for life. Here was a certain nucleus of strong conservatism and support for the executive. All that has been changed by the constitutional amendment of 1884, and all the members of the Senate now proceed ultimately from the same source as the deputies. The French Senate has now arrived at the consciousness of a solidarity of interest with the Chamber of Deputies upon the subject of legislative prerogatives *versus* executive prerogatives; and the power of dissolving the Chamber of Deputies, entrusted to the French President under the more favorable conditions for its exercise just mentioned, has now become practically obsolete. The French system is, therefore, veering towards the directory. This will not serve for France, however it may work in Switzerland or even in Norway. France must have a strong executive. If France will have a parliamentary system, then France must have a king. If, on the other hand, France will have an elected executive, then France must have the presidential system. This is her great governmental problem. All others should stand aside until this is substantially solved.

The fourth great problem of the constitutional law of the present, as I view these problems, concerns chiefly, if not wholly, the United States. It is the question of extending the legislation of the central government further into the domain of private law, especially in the regulation of commerce and matrimonial relations. The other states having federal governments, except Mexico, and, of course, all the states having centralized governments, have assigned these subjects to the legislation of the general government; and Mexico has gone much further than the United States in this direction.

Whatever may have been natural a century ago, when the settled parts of the commonwealths of this Union were separated from

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each other by comparatively impassable districts of primeval forest and there was comparatively little intercourse between them, now, when these obstacles have entirely disappeared and intercourse is so active that no man notes his passage from one commonwealth into another, it has become entirely unnatural and scarcely longer endurable that the law governing commerce should not be exclusively national. The existence of the common law as the basis of the law of the commonwealths upon this subject has minimized the difficulty of a great nation getting on with systems of local commercial law; but the differences in detail, at first hardly noticeable, have now, on account of the vast development in the complexity of these relations, become almost unendurable. This problem should be dealt with by constitutional amendment, if possible. If not, then the United States judiciary must put a much more liberal interpretation upon the existing commerce clauses of the constitution. The distinctions between commerce "among the commonwealths" and commerce within the commonwealths have now become too attenuated to bear the strain much longer. They must go, or the federal system of government may break down entirely.

It certainly is not necessary for me to enter into any argument at all to show that the scandals of polygamy and divorce, which bring the blush of shame to the cheek of every true American, have their root in the system of local regulation of the subjects of marriage and divorce. The family relations are fundamental in the civilization of a nation. Their proper regulation must rest upon the national consciousness of right and wrong. States' rights must give way upon this point too, if they would stand in regard to those subjects which are not so completely national in their character. In fact the whole system of federal government, that is, dual government under a common sovereign, is now under great strain, in consequence of the rapid development of nations and of national states. It is a question whether it can stand against the centralizing forces in modern political and civil society. It certainly can not unless it yields the transfer of some subjects, such as those just mentioned, from local to central regulation. This has been done in Switzerland, in the German Empire, in Brazil, and, in large degree, in Mexico; and the United

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States must follow the same course of development or witness soon the same sort of a movement for universal reform as occurred in 1787.

The fifth and last great problem, or rather series of problems, of the constitutional law of to-day which I shall consider in this paper relates to civil liberty.

From the point of public law, civil liberty, as distinguished from political liberty and moral freedom, is the immunity of the individual person within a given sphere against both the powers of the government and the encroachments of any other individual or combination of individuals. Constitutional law should construct this sphere, define its contents in principle, fix its boundaries and provide its fundamental guarantees and defenses. Usually this part of a constitution is called the bill of rights, although in its nature it is rather a bill of immunities.

Every written constitution in the civilized world, except that of France, contains such a division. Perhaps the constitution of the German Empire ought to be excepted, although the constitutions of the States of the Empire contain such provisions, and the Imperial constitution itself, in slight measure, contains them. The reason why it does not contain them in larger measure is quite apparent. It is simply because the imperial government is one of enumerated powers. This is not a sufficient reason, as we know from American experience; and the imperial constitution should be amended in this respect, and the imperial government should be subjected to limitations, on the one side, and charged with powers against the States of the Empire, on the other, in behalf of individual immunity against governmental power.

The first great problem, however, under this topic is the French question of amending the French constitution so as to introduce into it a series of provisions concerning the immunities of the individual person. It is quite surprising that the French instrument should be defective in regard to this matter. Almost every French constitution down to the present one has contained such provisions in much detail. In fact, the French taught the European continental world the doctrine of individual immunity

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against governmental power as a branch of constitutional law. It was at first thought that the omission of such a bill of immunities from the present French constitution was owing to the fragmentary nature of this constitution; but the French have now had nearly thirty years for the perfection of their instrument of organic law, and within this period they have had a constituent convention and have framed and adopted amendments to their constitution, but nothing of this nature was, I think, even proposed. We are, therefore, driven to the conclusion that the French statesmen and people do not consider such immunities for the individual to be necessary under their present political system, but feel, on the contrary, that with a government elective in all parts and an executive dominated by the legislature the individual is in no danger of governmental oppression. I do not know by what lessons of history or of more immediate experience the French have proved this doctrine to themselves. No government is more likely to ignore the natural limits between its powers and the immunities of the individual than an elective democratic government. The French have had this experience, more than once, themselves. I am, therefore, unable to regard this omission as anything less than a grave defect, presenting to the French a most serious problem of constitutional amendment.

As I have said, a bill of immunities is found in every other written constitution in the world, and its content is nearly the same in them all; but not a single European constitution provides any means for its lawful realization against the possible attempt of the legislature, nor in some cases of the executive, to encroach upon it, except perhaps petition to the government itself. That is to say, none of these European constitutions creates any judicial body vested with the power of interpreting constitutional limitations upon the powers of the whole government and of restraining the government from breaking through them. Many of them leave even the creation of the judiciary and the determination of its powers to legislative statute, which of course places the judiciary in a position of inferiority and subordination to the legislature. Others, while creating the courts by constitutional provision, fail to vest them with any such protective power. Even the constitution of Switzerland

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declares outright that the judicial tribunals shall have no power to pass upon the constitutionality of legislative acts.

The principle of European jurisprudence upon this point seems to be that the legislature is the proper protector of individual immunities against governmental power. In Europe, the title government is applied only to the executive, and the statement of the proposition as it presents itself to the European mind would be that the immunities of the individual are protected against governmental encroachment by the representatives of the people. In America, on the other hand, we consider the legislature to be a branch of the government, and therefore it appears to us as a sort of Celtic hoax to speak of the government defending the immunities of the individual against itself. In fact some of our greatest statesmen have contended that the judiciary is also a branch of the government, and that we are subjecting ourselves to the same kind of a hoax when we imagine that the judiciary will, in the long run, protect the realm of individual immunity against governmental encroachment. It appears, at times, as if they were right, and as if the judiciary were really casting its lot with the political branches of the government for the purpose of expanding governmental power at the expense of individual liberty. Still, on the whole, this has not been true. On the whole, a judiciary established directly by the constitution, composed of judges with life terms, sustained by a sound popular knowledge of what the immunity or liberty of the individual purports and a general popular determination to uphold it, is the best possible organ to be vested with the protection of that immunity against governmental encroachment as well as against encroachment from any other conceivable source. It is the only real antidote for the doctrine of socialism in regard to civil liberty. The socialistic doctrine, stated in a sentence, is that the individual is subject at all points to the control of the majority. This doctrine is an absolute negation of the true principle of civil liberty. As we have seen, civil liberty is individual immunity within a sphere marked out by the constitution against governmental encroachment or encroachment from any other source. It is the constitutional realm of individuality. And if in any country all government and every organization and every indi-

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vidual, except only one, should stand upon one side, and the single individual upon the other, it would be the constitutional duty of the body charged with the function of maintaining civil liberty to protect that single individual within this sphere against encroachment from any and every source, and to summon the whole power of the nation to its aid if necessary. And it would be the constitutional duty of those summoned to obey the call and render the aid required, although it might be directed against their own conceived views and interests. The doctrine of the greatest good to the greatest number and the principle of majority rule have no application whatsoever within this domain. When a constitution is being framed or amended, then the question of the nature and extent of civil liberty or individual immunity is indeed a matter of highest policy for the sovereign to determine in accordance with its own forms of procedure; but, once established, it becomes subject only to the provisions and principles of the constitution, interpreted by the organs of justice, and is removed entirely from the realm of legislative or executive policy and majority control. Now the only way to maintain this true idea and principle in regard to civil liberty is to put its protection under a non-political body, the organs of justice, not the organs for the fixing of policies, and to vest the organs of justice with the constitutional power to nullify any acts of the political branches of the government which may, in their judgment, undertake to encroach thereon. The legislature, in these modern times, is the branch of the government which is most prone to undertake these encroachments. The legislature is the branch which by its very nature regards everything as a matter of policy to be determined, at each moment, by majority action — and that action based upon majority will, not upon majority interpretation of higher law. It is the branch of the government which is almost sure to lose sight of the distinction between individual immunity and what it conceives to be general welfare, between justice and policy. It is absolutely certain to do so when a socialistic majority holds sway in the legislature. It was natural that the European peoples, accustomed to the despotism of the executive with the courts as a branch of the royal power, should have come upon the idea in the period of the revolutions,

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that is, in the period of their transition from absolute to constitutional government, that the representatives of the people in the legislature would be the only reliable support for civil liberty. Perhaps this was correct for that period and for those conditions. But I am sure that that period and those conditions have now passed, and that the realm of individual immunity is now in more danger from legislative than from executive encroachment. It is under the force of this conviction that I contend that the problem of creating an independent judiciary by constitutional amendment and vesting it with the protection of individual immunity against governmental encroachment, whether executive or legislative, as well as against encroachments from any other source, is one of the chief constitutional problems now confronting the European states. It will cost some effort to educate the European peoples up to an appreciation of this idea. How far they are away from it is indicated by the fact that when they immigrate into the United States, because this is a "free country," as they say, they almost always do what they can, when they do anything, to obliterate that great distinction between individual immunity and general welfare, between justice and policy, upon which, more than upon anything else, American liberty rests. The doctrine of the labor unions, which are predominantly European both in their composition and tendencies, that an individual shall not be allowed to work upon such terms as he may be able and willing to make, because in the conception of the majority of some labor union, or perhaps of all labor unions, it may be detrimental to their general welfare, is a good example of the profound ignorance on their part of this great American distinction and principle. Difficult, however, as it may be to instil the idea of this distinction into the European mind, still I am fully persuaded that the attainment by the European peoples of real constitutional government depends upon it. The alternative to it is, in the long run, legislative absolutism.

While I hold up the Constitution of the United States as the model in this respect, yet I do not pretend that this model is entirely perfect. Two great problems have confronted the American practice during the last fifty years, neither of which has been satisfactorily solved, and neither of which, I fear, will be so solved without further constitutional amendment.

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The first problem concerns the meaning of the thirteenth and fourteenth amendments, which, with the fifteenth, make up the constitutional product of the Civil War. There is not much doubt that the intention of the framers of these amendments was to place the entire domain of civil liberty or individual immunity under the protection of the United States authorities, and to vest the national judiciary with power to prevent encroachments thereon not only when proceeding from the government of the United States or the governments of the States but also when proceeding from combinations of individuals within the States. The Supreme Court of the United States has, however, held that these amendments did not extend the protecting power of the national authorities over this sphere to any such degree, but left the original control of the States over this domain unimpaired, except upon the specific points withdrawn by these amendments from that control; and that the national judiciary can protect the individual immunity provided in the fourteenth amendment only against encroachments attempted by the States, but not against those attempted by individuals or combinations of individuals within the States.

I contend that this is no satisfactory solution of the problem, because, in the first place, in a national state, although it may have a system of federal or dual government, sound political science requires that the entire individual immunity shall be defined, in principle, in the national constitution and shall have the fundamental means and guarantees of its defense provided in that constitution. The most fundamental and important thing in any free government is the system of individual immunity. Free government exists chiefly for its maintenance and natural enlargement. The contents of this immunity and the methods and means of its defense should therefore be determined by the national consciousness of right and justice. Any other principle than this belongs, not to the modern system of national states, but to the bygone system of confederated states. It was a resurrection of the doctrine of States' rights, in the extreme, when the Supreme Court of the United States put the interpretation which it did upon the new amendments — a doctrine which should have been considered as entirely cast out of this system by the results

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of the Civil War. This solution is unsatisfactory, in the second place, because it perpetuates the contention between the nation and the States concerning the control of this sphere, while if there is anything in a political system that ought to be made clear and fixed and simple it is this domain of civil liberty. The welfare and prosperity of the whole people depend upon it in a much higher degree than upon any other part of that system. Uncertainty about it and contention over it cannot result, in the long run, advantageously to the average citizen, although it may allow a larger license to the powerful.

The second problem under this head to which I would refer has been produced by the experience of the last six years of the Republic in what is called its imperial policy. This problem had to come, sooner or later. No country with so high a civilization as the United States can keep that civilization all to itself in the present condition of barbarism or quasi-barbarism throughout the larger part of the world. It must share its civilization with other peoples, sometimes even as a forced gift. This is nature's principle, and no civilized state can permanently resist its demand. It came rather suddenly upon our country, and some of us thought that we were not quite prepared for it, that we had not yet placed our own house quite in order. But every student and observer of the world's history and the world's methods knows that civilized nations are not, in the great world plan, allowed to delay the discharge of the duty of spreading civilization until, in their own opinion, they are ready to proceed. Something always happens to drive them forward before they are perfectly prepared and equipped for the great work. And so before the United States had fashioned its constitutional law to meet the exigencies of a colonial or imperial policy, the possession of insular territory was thrust upon the great Republic. We had to take possession first, and then by force of necessity adjust our political situation to the requirements of the situation. It has not been an easy problem, and no one pretends that we have solved it perfectly or completely. Both the Congress, the executive and the courts have shared in the work and in the responsibility; but candor compels us to say that, if we are to continue in this sort of work, it would be desirable, to say the least, so to

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amend the Constitution as to relieve the different branches of the government from the necessity of making usurpations of power, or something very like usurpations, to meet urgent conditions.

It is only since June 21 of the present year that we have been able to state with any certainty what the colonial policy, or imperial policy, of the Republic is. I think it can be now briefly expressed. It is that all of the territory of the North American continent over which the sovereignty of the United States may become extended shall be made, ultimately, States of the Union; and that all extra-continental territory over which it may become extended shall either be made, ultimately, States of the Union — as, possibly, the Hawaiian Islands and Porto Rico — or be erected into communities even more completely self-governing than States of the Union, under the protectorate of the United States — as Cuba already and, later on, the Philippines — that protectorate to be exercised chiefly for the purposes of preventing them from lapsing into barbarism internally, or from becoming a prey to the greed of other powers. This is a policy worthy of the Great Republic. It is the true imperial policy for a great civilized state engaged in the work of spreading civilization throughout the world. In comparison with it, the colonial policies of other countries appear mean and sordid and altogether lacking in the element of altruism necessary to real success in executing the mission of civilization.

Following such a noble policy as this, it is not difficult to forecast something of the future of this country. It might be a bold, but it would not be a reckless, prophecy to say that the child is now born who will see the States of this Union stretching from the Isthmus of Panama to the North as far as civilized man can inhabit, peopled by two hundred and fifty millions of freemen, exercising a free protectorate over South America, most of the islands of the Pacific and a large part of Asia. We possess already the extremes of this vast continental territory, as well as the great heart of it, and the most important Pacific Islands; and we have already a footing of influence in Japan and China hardly enjoyed by any other power. The exalted policy which I take to be the imperial policy of this nation cannot fail to extend that influence, prestige and power almost beyond measure.

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Do not understand me as claiming the development of such a policy for the party at present in power in Congress and the present administration without the aid of their party opponents. I am not at all sure that, in the immediate enthusiasm of victory and under the necessity of exercising temporary absolutism in government in the newly acquired territories, the party in power would not have lost sight of the real purpose of their work in the world's civilization, except for the earnest expostulations of their opponents calling them back to the contemplation of the historic principles of the Republic. I rather fear they would. This noble policy is, therefore, the resultant of two forces rather than the direct product of one. It is the policy of the Nation rather than of any party within the Nation or of any part of the Nation. As such, it is sound and true and unchangeable, and is destined to be pursued no matter what party shall hold the reins of the government.

But we have some constitutional difficulties in the way of the realization of this policy. These difficulties relate to the constitutional powers of the United States government and the limitations imposed thereon in behalf of individual immunity within newly acquired territory. It is settled that the United States government may acquire territory for the United States by treaty or conquest; that it may set up a temporary military régime therein against which there is no constitutional immunity for the individual; that it may relinquish possession of such territory to the inhabitants thereof or to another power, either absolutely or under such conditions in the form of a treaty as may be agreed upon by the parties, and may enforce the stipulations of the agreement in such ways as may have been agreed on, or in such ways as are recognized by the customs and practices of nations; or that it may perfect its acquisition and transform the temporary military despotism therein into such civil government as Congress may establish under the limitations of the Constitution in behalf of civil liberty. I say that these points are all well settled. But there is some question about the power of the United States government to exercise a protectorate over peoples occupying territory which is not a part of the United States, especially when that protectorate shall not have been established by treaty

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and shall not be exercised under the forms of international agreement or custom. There is not a word in the Constitution expressly authorizing it, and it is a grave question whether there is a word from which such power can be derived.

Moreover, it has appeared to the United States government desirable, perhaps I should say absolutely necessary, to make the transition from military despotism in the government of some of these new acquisitions to a first and temporary form of civil government without constitutional limitations in behalf of individual liberty, that is, to a temporary civil despotism or something of that nature, and for this it is extremely questionable whether there is any warrant in the Constitution. In order to meet the wishes of the government, or perhaps the necessities of the government, in this respect, the Supreme Court of the United States has so strained its powers of constitutional interpretation as virtually to enact, in the opinion of a large number of the best citizens of the country, constitutional legislation — constitutional legislation, too, which upon one point at least contradicts the prime purpose of the only legitimate imperial policy which a free republic can have. It is quite possible that the state of society and of the population in a newly acquired district may necessitate more summary judicial processes than those of the juries, and that public security and even individual liberty will be better protected under the more summary forms; and that, therefore, a judicial interpretation of the Constitution relieving the government from these limitations as to process in such districts would have a moral ground at least to stand on; but when the court allows the Congress to overstep the constitutional limitations on the government in behalf of the freedom of trade and intercourse between the people of such districts and the people in other parts of the United States and to erect a special tariff against such trade and intercourse, and thus to destroy, or at least greatly weaken, the prime means of extending civilization to the inhabitants of such districts, *viz.* a free commerce in mind and things, then neither the court nor the Congress nor the administration has any ground of any sort on which to stand, and we need an amendment to the Constitution to express the reason and the will of the sovereign upon this subject.

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We have in this whole question of territorial expansion one of the greatest problems of the constitutional law of this Republic, one which affects the whole world. It affects first of all the Republic itself, because upon its rightful solution depends the moral right of the Republic to have any imperial policy at all. It affects the peoples of the dark places of the world, who, though apparently unable to secure the blessings of civilization for themselves, certainly have the right to be left in their barbarism unless the intruding nation comes with a chiefly altruistic purpose. And it affects the other civilized powers in the example which it shall furnish them for their own work in the spread of civilization, for if the great Republic pursues an egoistic policy, they will certainly do likewise, and it is to be hoped that if it takes the other and the true course, they will not go in the opposite direction. No grander mission can be imagined than that which is now open to this American nation; and the time is now ripe for the sovereign people to discuss it in all its bearings, independently of ordinary party politics, and to write in the Constitution the methods and means which the government may employ, the purposes which its activities must subserve, and above all, the limitations upon the government in behalf of the civil liberty of every individual who may be brought under its jurisdiction or protection in realizing this transcendent mission, the civilization of the world.

John W. Burgess.

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PARLIAMENTARY OBSTRUCTION.

PARLIAMENTARY obstruction is no longer a mere intermezzo in the history of this or that parliament. It has become an international phenomenon which, in threatening manner, calls in question the whole future of parliamentary government. Nor indeed is it the legislative assemblies of Europe alone from which reports of parliamentary obstruction are brought. It is known in the four quarters of the globe. Long ago the Americans coined a special word for it, "filibustering," a word which, reminding us of piratical raids upon commerce, aptly characterizes a lawless arrest of the orderly conduct of business. The Parliament of Cape Colony has tried obstruction against the motherland; and, as early as 1901, the House of Representatives of the young Australian Commonwealth, shortly after its birth, had the pleasure of a twenty-seven-hour session. Almost daily, from some corner of the earth, come reports of threatened obstruction, of the struggle against it, of the victory of one side or the other. The results of obstruction, too, have already become manifest in parliamentary law. In many legislatures radical changes have been made in the rules of procedure; in others, such changes have been proposed and seriously debated. From the present, however, our gaze is turned with anxiety to the future. It cannot be ignored, although the obstructionists often fail to perceive it, that obstruction militates not only against the right of the parliamentary majority to decide but against the parliaments themselves as institutions. When, however, we consider the importance of parliament in the life of the modern state, and the fact that existing constitutions make no provision for filling the gap left by the failure of this organ to perform its functions, there appears back of obstruction, as its final issue, a condition of lawlessness which, according to the situation of the single state, may assume the form of despotism or of anarchy. Therefore the question how obstruction may be overcome is an extremely serious one; all the more serious because the answer to it is especially difficult.

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It is significant that this latest phenomenon in the realm of parliamentary life, like parliamentary life itself, is of Anglo-Saxon origin. The beginnings of obstruction can be observed in England even in the eighteenth century. In the United States, a stubborn attempt at obstruction in the House of Representatives led, in 1841, to the "one-hour rule," still in force, whereby no member taking part in a debate may speak longer than one hour. This measure was supplemented by the stricter rule of "five-minute debates," whereby a member who moves an amendment has no more than five minutes' time in which to present it, and a single member of the opposition the same length of time in which to contest it. In the England of the nineteenth century, too, there was a good old time, which lasted till the first Irish obstruction, when even members of the cabinet looked upon obstruction as a permissible means of defeating proposals initiated by the House and not acceptable to the government; to say nothing of leaders of the opposition who sought to hinder the majority by wordy speeches. It is told of no less a personage than Sir Robert Peel that, in 1831, he made no fewer than forty-eight speeches in fourteen days.

Of historical significance for England and, through the example it set, for the rest of the world as well, was the obstruction on the part of the Irish which began in 1877. Here for the first time was presented, in an epoch-making manner, the great problem as to the limits of the rights of parliamentary minorities. May the minority justifiably force its will upon the majority to the extent of compelling an abandonment of proposed measures? Further, may the minority, by means of the disadvantages associated with the obstruction of parliamentary business, compel the majority to carry out the positive wishes of the minority? In other words, is it permissible to concede to the minority a decisive share in the government? This problem has since been presented over and over again, now in this state, now in that; here temporarily in a specific case, there repeatedly in numerous cases; in several states, however, in a way that shakes the foundations of the whole political structure. That among these latter Austria-Hungary is to be placed in the front rank goes without saying.

The means which obstruction has at its disposal depend en-

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tirely on the character of the rules which govern the transaction of parliamentary business. These means are of two kinds. Either provisions of the standing rules which expressly guarantee certain rights to the minority are employed to prevent the passage of parliamentary resolutions, or open places in the disciplinary portion of the standing rules are so utilized as to place the majority under duress. A distinction must therefore be made between obstruction by means provided in the standing rules and obstruction by means contrary to the standing rules.

That form of obstruction which operates on legal ground possesses a great quantity of effective ammunition. The oldest and best known is the continuous speech. Of this there are many wonderful examples on record. How modest seems the seven-hour obstruction speech of the Social Democrat, Antrick, in the German Reichstag, and even the twelve-hour oratorical effort of Dr. Lecher in the Austrian House of Deputies, compared with a twenty-six-hour speech which was delivered in 1893 in the parliament of British Columbia, or with the thirty-seven-hour address in which a delegate in the Roumanian Chamber of Deputies, in 1897, demanded the indictment of Joan Bratiano! The annals of those American chambers which as yet have placed no limitations on debate record monstrous obstruction sessions. In April, 1896, a sitting of the Canadian House of Commons devoted to a bill dealing with the schools in Manitoba lasted a hundred and eighty hours, and in Chile a single speech is reported to have extended through ten days of a session.

Other means of obstruction are repeated interpellations, the reading of which may occupy many hours or even days; cumulation of amendments; putting of urgency motions; demands that the roll be called in taking votes or in order to determine whether a quorum is present for the transaction of business; and making the assembly incompetent to act by abstaining from participation in its proceedings. Used with the necessary skill, these means, singly or combined, can completely cripple the whole activity of the chamber in which they are employed.

Much more dangerous, however, is obstruction through conduct contrary to discipline. There are many parliaments which are able to exclude individual members for a time on the charge of

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disorderly conduct, but even such measures suffice only exceptionally to suppress tumults which are set in motion by whole parties. What a rôle tumults of this sort have played in the most recent parliamentary history is known to everybody. They have been compared frequently to revolutions, from which, however, they differ essentially in that the revolting minority can never take the place of the majority. Each victory of the minority signifies a confusion, never a clarification, of the situation, since the minority which celebrates the greatest triumphs can, according to its nature, create nothing positive: it is and remains dependent upon the concessions which the majority sees fit to make.

Transitory obstructions do not seriously disturb the politician. In single cases they may mitigate the asperities of partisan conflicts; indeed, the mere prospect of obstruction may hold back a majority from a relentless exploiting of its power. But stubborn, systematic obstruction raises the anxious question: How is it to be fought and overcome? This question belongs to the greatest problems of the statecraft of the present day. Its answer appears at first sight to be extraordinarily simple: the standing rules should be changed to meet the situation. But the easiest solution is often the hardest to attain; and even where the change is easily secured, the gravest consequences may follow. The remedy is frequently no less dangerous than the disease.

Before all else, account must be taken of the individual character of the state in which obstruction is to be crushed. If the state is well knit together, if no powerful parties inclined to resistance or to revolt stand back of the obstructionist delegates, then the change in the standing rules may be made without hesitation. So far as they are not based on clauses of the constitution or on statutory provisions, the standing rules may ordinarily be changed at any time by the chamber concerned. In this matter the majority has absolute power. Even if the procedure of the majority, in making such a change, be contrary to the existing rules, this fact will have no practical importance, since a breach of the standing rules in passing a resolution never carries with it the nullity of the resolution so passed. Outside of the chamber there is no one whose right and duty it is to bring under review the observance of the chamber's *loi intérieure*. Pure parliament-

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ary law, *i.e.* the order of business developed within the field left open by the constitution and the statutes, lacks sanction to a degree unparallel in other parts of the legal order, and all safeguards which juristic ingenuity can contrive have no significance in practical politics. Therefore a majority is able brutally to misuse its power, unchecked by the existence of any means of defense against its arbitrary proceedings. The minority may protest, complain of oppression, cry out about infraction of rights and a *coup d'état*, but all this has no practical importance whatever, especially if the government is of one mind with the chamber. We have accordingly witnessed, in many states, the spectacle of changes in the order of business to the disadvantage of the minority and under its fiery protests. The proceedings in the German Reichstag on the occasion of the customs tariff debate are still fresh in everyone's memory.

The case is wholly different, however, in states where large bodies of people, whose excitement is to be feared, stand behind the parliamentary parties, or where the majority of the day must be constantly on its guard lest it be forced down into a minority. Here amendments to the standing rules encounter great difficulties, if they do not become absolutely impossible. Although the majority has control over the order of business, it must also possess the power to force its measures through without regard to consequences. Such power is not found in numerical strength only, but also in the support given to the majority, above and below, outside the chamber. The history of the "lex Falkenhayn" is a most instructive example of the limits of the power of a parliamentary majority.

A further question demands consideration: what effects the struggle against obstruction, carried on within the field of the order of business, has upon the whole structure of the state. We must not deceive ourselves by imagining that the effects are limited to the immediate object of the conflict: they extend far beyond it. If the standing rules are amended, the amendments can take no other direction than the limitation of the minority in its entire parliamentary activity; and this again can be effected only by subjecting the initiative of the individual members and their efficiency in other respects to far-reaching restrictions. The time

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allowed for speaking will be shortened, the right of introducing motions will be made to depend upon the coöperation of a large number of members, the discussion of motions originating in the chamber will be relegated to certain days, a maximum duration will be established for sessions or for debates, the putting of interpellations will be associated with impeding formalities, such as a consenting vote of the whole chamber, *etc.* By such measures the activity of the parliament is necessarily confined within narrow limits; and the further this limitation goes, the more does the chamber resemble a voting machine. In America there is much complaint that the House of Representatives, with its severe restrictions upon debate, is falling behind the Senate in importance, and that the House does scarcely anything more than ratify the resolutions of its committees. These committees, however, stand in close touch with the administration, and therefore the administration, working through the committees, is gaining an influence upon legislative business that is contrary to the constitution. Similar results are even more manifest in states with a parliamentary government. The more the standing rules repress the minority, the more do they enhance the power of the majority and therefore also the power of the government which issues from the majority. It is highly interesting to follow from this point of view the history of obstruction in England. The closure and other new measures have given the cabinet unlimited control of the debates; and bitter complaints are made that it is now scarcely possible for a member of the House of Commons, who does not belong to the government party, to introduce an independent motion of any importance, particularly since the time for dealing with such motions has been reduced to a single day in the week with a definitely limited number of hours. It is, however, not the minority party only that suffers loss of power: the same is true of the majority. The power of a majority is manifested not only in its relations to the minority, but above all in its relations to the government which it supports; and this power is unchangeably connected with the measure of free activity in his sphere conceded to each member of parliament. History, indeed, can show one parliament in which obstruction was practically impossible. This was the French legislative body under the Consulate and the First

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Empire. In it neither debates nor comments nor interpellations were permitted: it did nothing but vote. In this instance the idea of the voting machine was fully realized. How insignificant such a parliament is, how little strength it possesses to withstand a despotic government, the French history of those days most distinctly demonstrates.

The power to combat obstruction which is provided in rules of the new type, and which is obtained through curtailment of the rights of minorities, would not perhaps be purchased at too dear a price, provided that the regular activity of parliament in all circumstances were thereby guaranteed. But this is in no wise the case. When no methods are left within the rules for carrying on obstruction, a determined minority will resort to methods contrary to the rules. Against single members, in such cases, severe disciplinary measures may be useful; but the expulsion of whole parties from parliament means only that the struggle is transferred from the House to the streets. This holds good even in case of a parliament so powerful and well knit as that of Great Britain. The procedure of the majority of the House of Commons against the Irish, in 1901, was indeed adopted under the greatest provocation, but no one can assert that it was adapted to lead to a satisfactory solution of the Irish question. The parliamentary crisis was met for the moment, but only at the cost of new embitterment of the masses hostile to the Union. Moreover, in seasons of excitement, the direst threats of punishment fail to produce the anticipated effect. The French Convention, in the year of terror, threatened unruly members with expulsion, a penalty which, as a rule, placed the party concerned in sight of the revolutionary tribunal and the guillotine. Nevertheless the most fearful tumults arose in the assembly, and an incredibly rough and brutal tone prevailed, which the nearness of the scaffold did not soften in the slightest.

There is therefore no guarantee that by changing the rules of order obstruction will everywhere be suppressed. All depends in the single case on the degree of soundness possessed by the body of the people. If a people is in a condition of internal disorder, split apart by incurable antagonisms, then obstruction is only a symptom of the general social disease; and it is certain that a

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disease is not to be cured by getting rid of a single symptom. But if, in spite of all the party divisions which are inevitably connected with modern social relations, there exists a national life that moves along normal lines, then obstruction, notwithstanding the momentary excitement which such a struggle begets, can be overcome without great trouble. The outcome of the recent obstruction in the German Reichstag makes this apparent. The Social Democrats decidedly overestimated the strength and energy of their popular backing. However unsatisfactory the attitude of the majority in the Reichstag on the tariff question was to a not inconsiderable part of the people, no one possessed of political insight could for a moment apprehend an outbreak of popular passion, transcending the bounds of vigorous discussion, which could have moved the majority to abstain from its proposed amendment and interpretation of the order of business. The Social Democrats were playing a game lost at the start. Their gain consisted in the great increase of votes which fell to them in the last election; but they would certainly have gotten these without the obstruction. The permanent result of their obstruction was the amendment of the order of business to the disadvantage of the minority; and in this respect their obstruction has left enduring wounds. It is certainly very doubtful whether a new attempt at obstruction in the Reichstag will soon be undertaken; for every unsuccessful obstruction is, for those who are defeated, a serious political blunder.

In those states where a stubborn obstruction is not combated by amendment of the order of business, results follow, nevertheless, similar to those in the states of the first group. A crippled parliament in no wise signifies a crippled state. If the state has a fairly strong administration, the administration will do what must needs be done without parliament; and for government under parliamentary control absolute government will be substituted, thinly veiled at best under constitutional formalities. In Austria a legal basis for such government has been found in the "emergency ordinance," which has assumed an importance not in the least anticipated by the framers of section 14 of the amended *Reichsratsstatut* of 1867. But if such a safety-valve is wanting in the constitutional law of a state, then will a strong administration

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nevertheless act, if need arises, on its own responsibility and afterwards ask parliament for a bill of indemnity, a thing it is sure of, provided it has an undoubted majority behind it. If, however, obstruction continues to rage, if it hinders the vote of indemnity, there is no one at all who can hold the government to its theoretical responsibility. In other cases, where the government is weak, or where the majority backing it is loosely united or for other reasons shaky, it will seek to purchase peace by concessions to the obstructing minority. By such a course, however, normal conditions are never restored; the only result is to increase the greed of the obstructionist parties. A state can stand that sort of thing so long as the foundations of its existence are not disturbed. But if vital political interests are at stake, and the government is not able, with the help of the majority, to overcome the obstruction, then there arises a complete confusion of all relations, which cannot be adjusted until out of the chaos, either from above or from below, a new power emerges and, regardless of other considerations restores authority.

In the world-historic struggle between power and freedom, obstruction is no ally of freedom. It serves *imperium*, not *libertas*, since it destroys the foundations of political liberty. The relation between the two pillars that support the modern state, the government and the representation of the people, is such that when one pillar is weakened the carrying strength of the other must be increased, or the whole structure collapses.

A strengthening of governmental power to the point of permanent absolutism is to-day impossible. Should parliaments show themselves incapable of fulfilling their mission; should they, on the one hand, fail to give effect to the principle of majority rule, or should they, on the other hand, through rules of procedure that fetter the spirit, degrade themselves to obsequious servants of the government of the day; it is certain that in the end new forms will be found in which the people may voice its will. The heir, though still in the cradle, is already born. The Swiss and the Americans have already constructed an institution which, for the present, supplements parliamentary representation. It is the referendum, the immediate decision of the people, in its various forms. Against the referendum no obstruction is possible; nor is

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there the same reason for obstruction, since all possible proposals of the minority may be submitted to the people. Thus, finally, may obstruction pave the way for an absolutism wholly different in kind from that of the past, the absolutism of the people — an absolutism which will probably show itself less favorably inclined towards a healthy social evolution than was the unlimited rule of the princes in the days of the *Aufklärung*.

Thus, for many a state, obstruction opens glimpses into a distant future, which he alone can regard as thoroughly pleasing, for whom the modern optimistic dogma of the uninterrupted progress of all things human has become an immovable conviction.

Georg Jellinek.

University of Heidelberg, 1903.

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THE ATTITUDE OF AMERICAN COURTS TOWARDS RESTRICTIVE LABOR LAWS.

ATTENTION has frequently been called to the tendency of written constitutions to limit the field for experimental legislation. In no department of law-making has this seemed to be more the case in the United States than in that pertaining to labor. While the Parliament of Great Britain has continuously expanded the labor code by adding each session some new regulation, the efforts in the same direction of American state legislatures have again and again been balked by the decision of the courts that their enactments were unconstitutional. This has been unfortunate, not only because it has at times prevented the enforcement of wise regulations, but also because it has implanted in the minds of workingmen a thorough distrust of the courts. Workingmen are not usually able to follow the subtle reasoning on which judicial decisions rest, and when they observe laws designed for their protection repeatedly nullified by the courts they soon come to believe that the latter are opposed to the cause of labor

It is the purpose of this article to review recent decisions involving the question of the constitutionality of restrictive labor laws, in order to determine whether the courts are really so bound by our written constitutions as some of these decisions seem to imply. I may say, at once, that the conclusion to which I have been brought is that under the flexible provisions of our constitutions the question of the constitutionality of a restrictive labor law is inseparably connected with the question of the wisdom of such a law. In other words, granted that a restriction is wise under the given conditions, it is an easy task to prove that it is also constitutional. If this view is correct no amendments to American constitutions will be needed to provide the country with as comprehensive labor codes as are found abroad. All that will be required is the conversion of American judges to belief in the beneficence of this species of legislation.

A review of cases in which labor laws have been declared un-

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constitutional shows that the decisions rest nearly always either on the ground that such laws interfere with the freedom of contract, or on the ground that they involve special or class legislation. Two illustrations will make this clear. In 1881 the legislature of Pennsylvania enacted a law prohibiting the practice, then common in the mining districts of the state, of paying wages in orders for goods against a company store. In passing upon this act five years later the supreme court of the state used the following language:

> These sections are utterly unconstitutional and void, inasmuch as by them an attempt has been made by the legislature to do what in this country can not be done; that is, prevent persons who are *sui juris* from making their own contracts. They are an infringement alike of the right of the employer and the employee; more than this, it is an insulting attempt to put the laborer under a legislative tutelage, which is not only degrading to his manhood but subversive of his rights as a citizen of the United States. He may sell his labor for what he thinks best, whether money or goods, just as his employer may sell his iron or coal, and any and every law that proposes to prevent him from so doing is an infringement of his constitutional privileges, and consequently vicious and void.[1]

From the vigorous language of this decision one would be led to infer, as the court in fact declares, that no law which prevented "persons who are *sui juris* from making their own contracts" could be constitutional. How far this is from the truth, will appear as we review later decisions.

An illustration of a labor law declared unconstitutional on the ground that it was special or class legislation is furnished by the records of the supreme court of California. The legislature of that state passed, in 1895, a law prohibiting the labor of barbers on Sundays and holidays after twelve o'clock noon. A case involving this act came before the supreme court of the state in the following year, when it was thus characterized:

> By this law the laboring barber, engaged in a most respectable, useful and cleanly pursuit, is singled out from the thousands of his fellows in other employments and told that, willy nilly, he shall not work upon

[1] Godcharles & Company *v.* Wigeman, 113 Pennsylvania State Reports, p. 431.

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holidays and Sundays after twelve o'clock noon. His wishes, tastes or necessities are not consulted. If he labors, he is a criminal. Such protection to labor, carried a little further, would send him from the jail to the poorhouse. How comes it that the legislative eye was so keen to discern the needs of the oppressed barber, and yet was blind to his toiling brethren in other vocations? Steam-car and street-car operatives toil through long and weary Sunday hours; so do mill and factory hands. There is no Sunday period of rest and no protection for the overworked employees of our daily papers. Do these not need rest and protection? The bare suggestion of these considerations shows the injustice and inequality of this law. In brief, whether or not a general law to promote rest from labor in all business vocations may be upheld as within the due exercise of the police power as imposing for its welfare a needed period of repose upon the whole community, a law such as this certainly cannot. A law is not always general because it operates upon all within a class. There must be back of that a substantial reason why it is made to operate only upon a class, and not generally upon all.[1]

This decision is less sweeping than that previously cited. It recognizes that the right to work on Sundays and holidays may be restricted by the legislature in the exercise of its police power. It also recognizes that a law applying only to a class may be sustained, if there is apparent to the court some sound reason for limiting it to the class. In the case at bar it finds no justification for Sunday legislation applying to barbers only, and it therefore declares such legislation unconstitutional.

Before considering the significance of these decisions, it will be well to recall the legal grounds upon which the rights freely to contract and to immunity from special or class legislation are based. The right freely to contract is not expressly guaranteed in any state constitution. It is held to be implied, however, in the "right to life, liberty, and property" which is made prominent in all of them. Thus as defined by the courts, "liberty" means, to quote from a recent Illinois decision,

not only freedom of the citizen from servitude and restraint, but . . . the right of every man to be free in the use of his powers and faculties,

[1] *Ex parte* Jentzsch, 44 Pacific Reporter, p. 803. Useful abstracts of this decision and of many of those which follow will be found in the Bulletins of the United States Bureau of Labor.

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and to adopt and pursue such vocation or calling as he may choose, subject only to the restraints necessary to secure the common welfare. . . . Property, in its broader sense, is not the physical thing which may be the subject of ownership, but is the right of dominion, possession and power of disposition which may be acquired over it. And the right of property preserved by the constitution is the right not only to possess and enjoy it, but to acquire it in any lawful mode, or by following any lawful industrial pursuit which the citizen in the exercise of the liberty guarantied may choose to adopt. Labor is the foundation of all wealth. The property which each one has in his labor is the common heritage. And, as an incident to the right of acquiring property, the liberty to enter into contracts by which labor may be employed in such way as the laborer may deem most beneficial, and of others to employ such labor, is necessarily included in the constitutional guaranty.[1]

"The privilege of contracting" is thus, as was affirmed by the same court in a later decision, "both a liberty and a property right."[2] The prohibition of special or class legislation is explicit in all of the state constitutions. There can therefore be no doubt of the universality of these rights in the American commonwealths. Moreover, the first section of the fourteenth amendment of the federal constitution is quite generally held to protect these fundamental rights as among the "privileges and immunities of citizens of the United States," disregard of which is inconsistent with "due process of law." This is important chiefly because it makes possible an appeal to the United States supreme court when these rights are infringed, and has enabled that tribunal to lay down certain very important principles in regard to the scope of the police power in connection with the regulation of labor conditions. The rights with which restrictive labor laws usually conflict are thus protected by both the state and federal constitutions. This does not mean, of course, that they are inviolable. In the exercise of its police power, a state legislature may set aside these along with other merely private rights. The question as to the constitutionality of restrictive labor laws thus reduces itself to that of the scope of the police power.

[1] Braceville Coal Company *v.* The People, 35 Northeastern Reporter, p. 62. Ritchie *v.* People, 55 Illinois Reports, p. 98.

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In his valuable work on *The Police Power*, Professor Freund defines it "as the power of promoting the public welfare by restraining and regulating the use of liberty and property." Helpful as this definition is as a means of distinguishing the power of police from other powers, it obviously throws little light on the scope of this power. The only way to determine whether a given statute designed to promote the public welfare is or is not a legitimate exercise of the police power is to examine the authoritative decisions in which similar statutes are involved. Confused and conflicting as are these decisions, it is believed that a study of them justifies the contention that in the field of labor restrictions the courts will sustain any measure which they think really calculated to promote the public welfare.

Attention has already been called to the decision of the supreme court of Pennsylvania that a truck act was unconstitutional because it interfered with the freedom of the workman to sell his labor and of the employer to buy it on such terms as were mutually satisfactory. We may compare this with other decisions involving the truck acts of other states. Such acts have been declared unconstitutional in Illinois, Kansas and Indiana; and have been approved or sustained in Colorado, Kentucky and Tennessee, the law of the last mentioned state being also upheld by the federal supreme court. The first two decisions, rendered in 1892 and 1899, respectively, use nearly as strong language as that of the Pennsylvania court already quoted. The supreme court of Illinois affirms that

> the police power of the state is limited to enactments having reference to the comfort, the safety and the welfare of society, and under its guise a person cannot be deprived of a constitutional right. Under it an adult person of sound mind, laboring under no legal disability, cannot be deprived of the right to make contracts in respect to labor and the acquisition of property, under the pretence of giving such person protection.[1]

The supreme court of Kansas is even more vigorous in its disapproval of this species of legislation. It finds fault with the

[1] Frorer *et al. v.* The People, 141 Illinois Reports, p. 171.

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particular act brought before it because it applies only to "corporations or trusts employing ten or more persons." Such a limitation appears to it to involve indefensible discrimination. It also condemns the very principle of truck legislation. Among other things it declares:

> Such legislation suggests the handiwork of the politician rather than the political economist. It has been sought by some judges to justify legislation of this kind upon the theory that, in the exercise of police power, a limitation necessary for the protection of one class of persons against the persecution of another class may be placed upon freedom of contract. As between persons *sui juris*, what right has the legislature to assume that one class has the need of protection against another? In this country the employee to-day may be the employer next year, and laws treating employees as subjects for such protective legislation belittle their intelligence and reflect upon their standing as free citizens. It is our boast that no class distinctions exist in this country. An interference by the legislature with the freedom of the citizen in making contracts, denying to a part of the people, possessing sound minds and memory, the right to bargain concerning the equivalent they may desire to receive as compensation for their labor, is to create or carve out a class from the body of the people and place that class within the pale of protective laws which invidiously distinguish them from other free citizens; thus dividing by arbitrary fiat equally free and intelligent people into distinctive classes or grades, the one marked by law as the object of legislative solicitude, the other not. . . . Laws which infringe upon the free exercise of the right of a workingman to trade his labor for any commodity or species of property which he may see fit, and which he may consider to be the most advantageous, are an encroachment upon his constitutional rights and an obstruction to his pursuit of happiness. Such laws as the one under consideration class him among the incompetents and degrade his calling.[1]

These citations serve sufficiently to indicate the grounds upon which truck acts have been condemned.[2] The courts of Penn-

[1] State *v.* Haun, 59 Pacific Reporter, p. 340.

[2] The decision nullifying the truck act of Indiana need not detain us, since it was based entirely on the ground that the act applied only to employees in or about coal mines and that this was indefensible special or class legislation. The general attitude of the supreme court of Indiana is more accurately indicated by the deci-

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sylvania and Illinois deny flatly the right of the legislature to interfere with the freedom of the labor contract between persons *sui juris*. The court of Kansas, rendering its decision some years later, recognizes the possibility that such interference may be justified as an exercise of the police power, but repudiates the idea that wage-earners as a class need any such protection as the truck act proposed to extend to them. It may be noted incidentally that the question as to whether by such a law the legislature "carves out a class from the body of the people," or simply recognizes the existence of a class already in being, is one not of law but of industrial fact. The truck act of Kansas may have been "the handiwork of the politician," but it is certainly misleading to imply, as does the court, that such legislation does not now enjoy the sanction of intelligent political economists.

The decisions approving truck legislation bring out clearly the economic arguments in favor of such interference. In replying to an interrogatory formally addressed to it by the state legislature the supreme court of Colorado declared on March 30, 1897, that

> a majority of the court are of the opinion that the legislature may, in the exercise of its police power, enact laws of this character when necessary to prevent oppression and fraud, and for the protection of classes of individuals against unconscionable dealings.[1]

And it continues:

> We may properly take cognizance of the fact that the most serious disturbances which have occurred in this country for the last twenty-five years have grown out of controversies between employer and employee. No one doubts the authority or questions the duty of the state to interfere with such force as may be necessary to repress such disturbances and maintain the public peace and tranquillity;

sion it handed down on the same day (Nov. 25, 1902) as that involving the truck act, upholding the constitutionality of a law prohibiting the assignment of future wages on the ground that "the situation of [wage-earners] renders them peculiarly liable to imposition and injustice at the hand of employers, unscrupulous tradesmen and others who are willing to take advantage of their condition." (65 Northeastern Reporter, p. 521.)

[1] 48 Pacific Reporter, p. 512.

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and as well may the state provide in advance against certain kinds of fraud and oppression which lead to these outbreaks.

The supreme court of Kentucky sustained on September 27, 1900, the act of that state which requires "that all persons, associations, companies and corporations employing the service of ten or more persons in any mining work" in the state shall on or before the 16th of each month pay in full in lawful money the wages agreed upon for the previous month. The requirement that wages be paid in lawful money was not in question in this decision, because Kentucky had embodied a truck clause in her constitution.[1] The affirmation that limiting the act to enterprises employing ten or more persons did not render it special legislation is, however, in interesting contrast with the contrary view of the supreme court of Kansas. The Kentucky tribunal says:

> We think the classification or apparent discrimination made in the statute is permissible, because it is natural and reasonable and, moreover, entirely consistent with the end sought to be accomplished by the organic law. The abuse sought to be corrected was the imposition practised on the miners by the operators of mines by forcing them, directly or indirectly, into dealing with the "company stores," where goods at exorbitant prices were paid for wages instead of money. This evil can hardly be practised at small concerns, or where less than ten miners are employed. In effect, the lawmakers said there is in small concerns using less than ten men practically no such evil as the constitution seeks to suppress; therefore we ignore the small concerns, and apply the benefit of the constitutional provision to that portion of the class only which needs the benefit.[2]

This seems to be a conclusive answer to the objection that such a limitation involves special legislation.

The most exhaustive decision sustaining a truck act is that rendered by the supreme court of Tennessee on November 8, 1899. The act in question differs from the ordinary prohibition of payment of wages in scrip or in orders on a company

[1] Section 244: "All wage-earners in this state employed in factories, mines, workshops, or by corporations shall be paid for their labor in lawful money."

[2] 58 Southwestern Reporter, p. 441.

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store in that it seeks to attain the same end by requiring employers paying in "orders" of any sort to redeem the latter in lawful money on demand.[1] After explaining at length the significance of the phrases "law of the land" and "due process of law" contained in the state and federal constitutions, the court says:

> The legislature evidently deemed the laborer at some disadvantage under existing laws and customs, and by this act undertook to ameliorate his condition in some measure by enabling him, or his *bona fide* transferee at his election, and at a proper time, to demand and receive his unpaid wages in money rather than in something less valuable. Its tendency, though slight it may be, is to place the employer and employee upon equal ground in the matter of wages, and, so far as calculated to accomplish that end, it deserves commendation. . . .
>
> Furthermore, the passage of the act was a legitimate exercise of the police power, and upon this ground also the legislation is well sustained. . . . Besides the amelioration of the employee's condition, the act was intended and is well calculated to promote the public peace and good order and to lessen the growing tendency to strife, violence and even bloodshed in certain departments of important trade and business.
>
> . . . Such being the character and tendency of the act, we have no hesitation in holding that it is valid, both as general legislation, without reference to the state's reserved police power, and also as a wholesome regulation adopted in the proper exercise of that power.[2]

The reasoning of this decision is all the more significant, because when the case was appealed to the federal supreme court that tribunal declared that "the supreme court of Tennessee justified its conclusions by so full and satisfactory a reference to the decisions of this court as to render it unnecessary for us to travel over the same ground"[3] and itself sustained the law.

A comparison of these different decisions appears to justify the conclusion that the constitutionality of truck legislation depends upon the reality of the abuses that such legislation is intended to correct. If, as a matter of fact, workmen constitute a class in the community that needs special protection because specially exposed to unfair treatment by unscrupulous employers, the high-sounding

[1] Act of March 23, 1899. [2] 53 Southwestern Reporter, p. 955.
[3] Oct. 21, 1901, 22 Supreme Court Reporter, p. 1.

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phrases of the Kansas decision lose all point. If, as a matter of fact, the company-store abuse is the cause of "strife, violence, and even bloodshed" between workmen and employers, the police power may be called in to suppress it. If, finally, as a matter of fact, these evils arise only where enterprises employ ten or more men, then limiting the prohibition to such enterprises is a reasonable and proper restriction, not open to the constitutional objection that it involves special or class legislation. In the earlier decisions cited the courts were vehement in their condemnation of attempts to restrain freedom of contract in reference to wages; but at the same time they were enforcing, as a matter of course, usury laws imposing even more drastic restrictions upon freedom of contract with reference to interest. The latter were approved because their utility was appreciated. The former were condemned because the judges had in mind the conditions of an earlier industrial society in which wage-earners were not a class by themselves and consequently were not in need of special protection. As the need of such restrictions becomes manifest, may we not be certain that doubts in regard to their constitutionality will vanish?

The Sunday labor of barbers has been the frequent object of legislative solicitude. In the decision cited the California statute limiting such labor was declared unconstitutional on the ground that it involved special or class legislation. Similar measures have been condemned on the same ground in Missouri,[1] Illinois [2] and Washington.[3] In New York, Michigan, Tennessee, Minnesota and Oregon, on the other hand, the state legislatures have been upheld in enacting Sunday closing laws applying only or in a special way to barbers. Moreover, the United States supreme court has upheld such legislation in a case appealed to it under the Minnesota law. The arguments in support of Sunday laws applying only to barbers will appear from a few extracts from these decisions.

In rendering its decision the New York court of appeals used the following language:

[1] Act of March 18, 1895, in State *v.* Grauneman, 33 Southwestern Reporter, p. 784.

[2] Act of June 26, 1895, in Eden *v.* People, 43 Northwestern Reporter, p. 1109.

[3] Ordinance of City of Tacoma, 46 Pacific Reporter, p. 255.

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It is to the interest of the state to have strong, robust, healthy citizens, capable of self-support, of bearing arms, and of adding to the resources of the country. Laws to effect this purpose, by protecting the citizen from over-work and requiring a general day of rest to restore his strength and preserve his health, have an obvious connection with the public welfare. . . . As barbers generally work more hours each day than most men, the legislature may well have concluded that legislation was necessary for the protection of their health. We think that this statute was intended and is adapted to promote the public health, and thereby to serve a public purpose of the utmost importance.[1]

It is, therefore, the court concluded, a legitimate exercise of the police power.

The Minnesota act was peculiar in that it prohibited all Sunday labor except works of necessity or charity and added, "provided, however, that keeping open a barber shop on Sunday for the purpose of cutting hair and shaving beards shall not be deemed a work of necessity or charity." In passing on the question whether this proviso did not involve special or class legislation the supreme court of the state said:

The object of the law was not to interfere with those who wish to be shaved on Sunday, or primarily to protect the proprietors of barber shops, but mainly to protect the employees in them by insuring them a day of rest. . . . Courts will take judicial notice of the fact that, in view of the custom to keep barber shops open in the evening as well as in the day, the employees in them work more, and during later, hours than those engaged in most other occupations, and that this is especially true on Saturday afternoons and evenings; also that, owing to the habit of so many men to postpone getting shaved until Sunday, if such shops were to be permitted to be kept open on Sunday the employees would ordinarily be deprived of rest during half of that day. In view of all these facts we cannot say that the legislature has exceeded the limits of its legislative police power in declaring that, as a matter of law, keeping barber shops open on Sunday is not a work of necessity or charity.[2]

The decision of the federal supreme court added nothing to this

[1] People *v.* Havnor, 43 Northeastern Reporter, p. 541 (Apr. 14, 1896).
[2] State *v.* Petit, 77 Northwestern Reporter, p. 225.

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reasoning but gave it the weight of its authority by quoting it at length in its own opinion sustaining the law.[1] Its view was accepted as conclusive by the supreme court of Oregon, which declared, in sustaining the Sunday closing law for barbers of that state, that if the classification on which it rested is "not in conflict with the federal constitution, it is necessarily not in conflict with our own."[2]

A comparison of these decisions indicates the grounds on which the courts hold a statute to be or not to be special or class legislation. As Professor Freund has summarized the principle: "Where a restraint is confined to a special class of acts or occupations, that class must present the danger dealt with in a more marked and uniform degree than the classes omitted."[3] In some of the states the courts have failed to see anything about the business of barbers which justifies special Sunday legislation for their protection. In other jurisdictions full weight has been given to the peculiarities of this trade: the tendency to keep open evenings and Sunday mornings to accommodate customers who might with little inconvenience come at other times and, consequently, to require excessively long hours of attendance on the part of employees. With these peculiarities in mind, one can easily answer such objections as were urged by the supreme court of California against legislation of this character.[4] The view that it is oppressive to the barbers themselves is readily disposed of by the consideration that it is these very barbers who most eagerly desire it. It is of no advantage to them as a class to incur serious discomfort for the accommodation of customers when a little compulsion would cause these customers to come at more convenient hours. It is not the eagerness of barbers to work seven days in the week that causes their shops to be kept open on Sundays, but the pressure of an unregulated competition which they would be only too glad to restrain. The comparison of barbers with "street-car operatives" and the "employees of our *daily* newspapers" which the court suggests is quite beside the mark, for the obvious reason that in the case of the latter suspension of labor on Sun-

[1] 20 Supreme Court Reporter, p. 666 (April 9, 1900).
[2] 69 Pacific Reporter, p. 445 (July 7, 1902).
[3] The Police Power, p. 755. [4] *Supra*, pp. 590, 501

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days would mean not merely the concentration of work in the other days of the week but the entire deprivation of the public of services upon which its wellbeing largely depends. The fact that these classes also need "rest and protection," granting that this is the case, is no valid objection to protecting barbers by a law well adapted to their industry but not at all suited to the others mentioned. It is not necessary to follow these considerations further to show that when a law extending protection to a special class is really beneficent and equal in its operation the constitutional objections to it fall away. Here, as in the case of the truck acts already considered, the constitutional and the economic aspects of the question are so intimately related that we may be certain that a court which believes a protective law economically desirable will find it legally admissible.

Truck acts and special Sunday closing laws are measures of relatively slight moment to the people of the United States. The attention devoted to them is justified only by the importance of the principles involved in the decisions to which they have given rise. I come now to a series of decisions of quite a different character. No labor question has been more prominently before the American public in recent years than that as to the proper length of the working day. Until quite lately it has been assumed that this was a matter with which state legislatures could not interfere, except as regards minors, women and public employees. The decisions which have reversed this opinion, at least for some of the states, merit careful consideration because they have made valid more extreme protective labor laws than are yet to be found in any European country. The first law of this character to be finally sustained by the courts was the ten-hour law applying to bake-shops passed in 1895 by the legislature of New York state. Before this statute came before the courts, however, the Utah eight-hour law of 1896, applying to mines and smelters, had been sustained not only by the supreme court of that state, but by the federal supreme court. The latter legislation thus merits prior consideration.

When Utah was admitted to statehood in January, 1896, it had as one of the novel features of its constitution an article (article xvi) treating exclusively of labor. Among other things

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this article directed (section 6) that "the legislature shall pass laws to provide for the health and safety of employees in factories, smelters and mines." Acting under this general authority the legislature passed during its first session a statute making eight hours a day the period of employment in mines and smelters, "except in cases of emergency where life or property is in imminent danger," and penalizing violations as misdemeanors. Test cases were brought before the supreme court of the state in the same year, and the act was sustained as regards both mines and smelters.[1] The cases were promptly appealed to the supreme court of the United States, which rendered its decision, also sustaining the law, on February 28, 1898.[2] The following abstract of these decisions indicates sufficiently the grounds upon which they rested.

In its first decision[3] sustaining the law, so far as it applies to mines, the supreme court of Utah quotes at length from the labor article of the constitution to show that the protection of labor is one of the functions of the legislature. It then describes the nature of underground mining to show that a limitation on the hours of work for miners is a proper health measure. "We cannot say," it concludes, "that this law, limiting the hours of labor in underground mines to eight hours each day, is not calculated to promote health." Turning, then, to the question whether the act interferes with constitutional rights, it justifies the measure as imposing a proper restraint on personal liberty and as free from the taint of special or class legislation. "Some pursuits," it declares,

> are attended with peculiar hazards and perils, the injurious consequences from which may be largely prevented by precautionary means, and laws may be passed calculated to protect the classes of people engaged in such pursuits. It is not necessary to extend the protection to persons engaged in other pursuits not attended with similar dangers. To them the law would be inappropriate and idle. So, if underground mining is attended with dangers peculiar to it, laws

[1] Holden *v.* Hardy (Oct. 29, 1896), 46 Pacific Reporter, p. 756; State *v.* Holden (Nov. 11, 1896), 46 Pacific Reporter, p. 1105.

[2] Holden *v.* Hardy, 18 Supreme Court Reporter, p. 383.

[3] 46 Pacific Reporter, p. 756.

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adapted to the protection of such miners from such danger should be confined to that class of mining, and should not include other employments not subject to them.

Believing this to be the case, the court upholds the law. Finally, it shows by citations from the decisions of other courts that the act may be defended as a legitimate exercise of the police power.

The second decision[1] of the Utah court sustains, by a similar line of reasoning, the part of the act applying to smelters. It alludes briefly to the noxious gases that must be inhaled by persons engaged in this industry and concludes that a restriction on the hours of employment is a proper health regulation. "Twelve hours a day would be less injurious than fourteen, ten than twelve, and eight than ten. The legislature has named eight. Such a period was deemed reasonable." After a brief reference to the peculiar constitutional provisions of Utah in regard to labor, it adds:

> Nor do we wish to be understood as intimating that the power to pass the law does not exist in the police powers of the state. The authority to pass laws calculated and adapted to the promotion of the health, safety or comfort of the people, and to secure the good order of society and the general welfare, undoubtedly is found in such police powers.

The act may thus be defended as consonant with the labor article of the state's constitution and also as a legitimate exercise of the police power, shared by all the states.

The decision of the federal supreme court affirming the judgments of the supreme court of Utah was delivered by Mr. Justice Brown, Justices Brewer and Peckham dissenting. It is especially valuable because it presents a comprehensive review of earlier decisions interpreting the fourteenth amendment and outlining the scope of the police power of the states. The parts immediately applicable to the Utah statute are summarized in the following extracts.

After showing that the mining industry has long been recognized as one requiring regulation to protect the lives of miners, it continues:

[1] 46 Pacific Reporter, p. 1105.

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But if it be within the power of the legislature to adopt such means for the protection of the lives of its citizens, it is difficult to see why precautions may not also be adopted for the protection of their health and morals. . . . With this end in view . . . laws have been enacted limiting the hours during which women and children shall be employed in factories; and while their constitutionality, at least as applied to women, has been doubted in some of the states, they have been generally upheld. . . . Upon the principles above stated, we think the act may be sustained as a valid exercise of the police power of the state. . . . [The employments of mining and smelting], when too long pursued, the legislature has judged to be detrimental to the health of the employees; and, so long as there are reasonable grounds for believing that this is so, its decision upon this subject cannot be reviewed by the federal courts. While the general experience of mankind may justify us in believing that men may engage in ordinary employments more than eight hours per day without injury to their health, it does not follow that labor for the same length of time is innocuous when carried on beneath the surface of the earth, where the operator is deprived of fresh air and sunlight, and is frequently subjected to foul atmosphere and a very high temperature or to the influence of noxious gases generated by the processes of refining or smelting.[1]

It then quotes with approval a considerable part of the decision of the Utah court in the second case referred to above, closing with the sentence:

Though reasonable doubts may exist as to the power of the legislature to pass a law, or as to whether the law is calculated or adapted to promote the health, safety or comfort of the people, or to secure good order or promote the general welfare, we must resolve them in favor of the right of that department of government.

Continuing it says:

The legislature has also recognized the fact, which the experience of legislators in many states has corroborated, that the proprietors of these establishments and their operatives do not stand upon an equality, and that their interests are, to a certain extent, conflicting. The former naturally desire to obtain as much labor as possible from their employees, while the latter are often induced by the fear of discharge to conform to regulations which their judgment, fairly exercised, would

[1] 18 Supreme Court Reporter, pp. 383 *et seq.*

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pronounce to be detrimental to their health or strength. In other words, the proprietors lay down the rules, and the laborers are practically constrained to obey them. In such cases self-interest is often an unsafe guide, and the legislature may properly interpose its authority.

It may not be improper to suggest in this connection that although the prosecution in this case was against the employer of labor, who apparently, under the statute, is the only one liable, his defence is not so much that his right to contract has been infringed upon, but that the act works a peculiar hardship to his employees, whose right to labor as long as they please is alleged to be thereby violated. The argument would certainly come with better grace and greater cogency from the latter class. But the fact that both parties are of full age, and competent to contract, does not necessarily deprive the state of the power to interfere, where the parties do not stand upon an equality, or where the public health demands that one party to the contract shall be protected against himself. The state still retains an interest in his welfare, however reckless he may be. The whole is no greater than the sum of all the parts, and when the individual health, safety and welfare are sacrificed or neglected, the state must suffer.

The federal supreme court thus not only endorses the reasoning of the supreme court of Utah at every point, but it adds important considerations of its own, all favorable to the constitutionality of the statute. It recognizes that mining and smelting are peculiarly dangerous and unhealthful employments. It sees no reason why the police power should not embrace the protection of health and morals as well as that of life and property. It approves of restrictions on hours as means of protecting health. On these grounds the act is well sustained. But it goes further. It believes that large discretion in the exercise of the police power should be left to the legislative branch of the government; that employers and employees sometimes bargain on unequal terms and that at such times the legislature may properly interfere; finally, that the legislature has the right, when this is the case, to protect a man even "against himself."

In laying down the above principles the court had in mind, of course, the limitations imposed by the fourteenth amendment, not those contained in the state constitutions. How little immediate influence its reasoning had upon the minds of some of the judges of the state courts was illustrated a year later (July 17

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1899), when the supreme court of Colorado rendered a decision declaring unconstitutional an act copied word for word from the Utah eight-hour law. A brief summary of this decision[1] will show that, at least at one point, the Colorado court disagrees in principle with the United States supreme court.

At the outset the decision alludes to the history of the Utah statute, but tries to minimize the significance of the decisions sustaining it by connecting them with the peculiar provisions of Utah's constitution. After pointing out that there are no similar provisions in the constitution of Colorado, it proceeds to demonstrate that such a law is not a legitimate exercise of the police power by the following reasoning:

> Were the object of the act to protect the public health, and its provisions reasonably appropriate to that end, it might be sustained; for in such a case even the constitutional right of contract may be reasonably limited. But the act before us is not of that character. In selecting a subject for the exercise of the police power, the legislature must keep within its true scope. The reason for the existence of the power rests upon the theory that one must so use his own as not to injure the public health, safety, morals or general welfare. How can an alleged law that purports to be the result of an exercise of the police power be such in reality when it has for its only object, not the protection of others, or the public health, safety, morals or general welfare, but the welfare of him whose act is prohibited, when, if committed, it will injure him who commits it, and him only?

That this view is squarely opposed to that of the United States supreme court that the legislature may protect a man even "against himself" is obvious. As Professor Freund says, in commenting upon the above decision:

> The right to choose one course of action even to the extent of incurring risks, where others are not concerned, is a part of individual lib-

[1] 58 Pacific Reporter, p. 1071. The sequel of this decision was an amendment to the Colorado constitution expressly conferring upon the legislature the power which the state supreme court denied to it. This was submitted to the people on March 14, 1901, and adopted the following year. How close a connection this embittered struggle to secure the eight-hour day may have had with the sanguinary labor troubles from which Colorado has recently suffered, only those on the ground can judge.

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erty. . . . It is, however, a fallacy to transfer this argument from the individual to the particular class, and to say that the police power has no business to protect the class against its own acts. . . . If the health of the class is impaired by long hours of work under unsanitary conditions, a public interest exists which may set the police power in motion.[1]

In other states than Colorado the influence of the federal decision has been more marked. In at least four instances it has been accepted as determining, and laws restricting the hours of labor of adult men in special employments have been sustained. The first of these is a law of Missouri, passed March 23, 1901, which forbids the employment of persons in underground mines for more than eight hours a day. With it should be grouped as a second instance the eight-hour law applying to underground mines and smelters passed by the state of Nevada on February 23, 1903. These statutes are so similar to that of Utah that no new considerations are brought out in the decisions[2] upholding them. The third instance is a law of Rhode Island, passed April 4, 1902, which limits the hours of street railway employees to ten a day. As the supreme court of that state declared, if the Utah law is a legitimate exercise of the police power, the Rhode Island statute "is more clearly within such power, for the triple reason that it deals with public corporations, the use of a public franchise, and a provision for public safety."[3]

The fourth instance is the more significant New York law limiting the hours of employment in bake-shops in that state to ten a day. This is more nearly parallel with the Utah law, and the decision of the court of appeals sustaining it, which was rendered on January 12, 1904, has been justly heralded as "one of the most important decisions handed down by [that tribunal] in recent years."[4] The facts that it was reached by the close vote of four to three and that five of the seven judges sitting saw

[1] The Police Power, p. 142.

[2] State *v.* Cantwell *et al.*, 78 Southwestern Reporter, p. 569; *in re* Boyce, 75 Pacific Reporter, p. 1.

[3] July 27, 1902, 54 Atlantic Reporter, p. 602.

[4] People *v.* Lochner, 177 N. Y. Reporter, p. 145. A good summary of this decision is given in the Bulletin of the New York Department of Labor, March, 1904, pp. 37–43.

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fit to hand down opinions, which together fill forty-four pages of the official record, add to its interest. A brief summary will suffice to indicate the grounds upon which the decision rested.

Chief Judge Parker, speaking for the majority of the court, prefaces his opinion with a review of the decisions outlining the scope of the police power similar to that in the federal decision on the Utah case. Coming to the question at bar, he continues:

> It can be safely said that the family of to-day is more dependent upon the baker for the necessaries of life than upon any other source of supply. This being so it is within the police power of the legislature to so regulate the conduct of that business as to best promote and protect the health of the community. . . . Why should any one question the object of the legislature in providing . . . that "no employee shall be required or permitted to work" in such an establishment "more than sixty hours in any one week," an average of ten hours for each working day? It is but reasonable to assume from this statute as a whole that the legislature had in mind that the health and cleanliness of the workers, as well as the cleanliness of the work-rooms, was of the utmost importance, and that a man is more likely to be careful and cleanly when well, and not overworked, than when exhausted by fatigue, which makes for careless and slovenly habits and tends to dirt and disease. If there is opportunity — and who can doubt it? — for this view, then the legislature had the power to enact as it did, and the courts are bound to sustain its action as justified by the police power.

After referring to the decision in the Utah case and pointing out that it is "controlling so far as the fourteenth amendment is concerned, and should be controlling in this court so far as equivalent provisions of our state constitution are concerned," he goes on to say:

> It must also be held, under the authority of Havnor's case[1] — even though it may be assumed from the reading of the statute that the object of the legislature is to protect employees in such establishments from working more than ten hours a day — that it is within the police power and therefore not repugnant to the state constitution. . . . Many medical authorities classify workers in bakers' and confection-

[1] This was the case under the Sunday closing law applying to barbers already referred to, *supra*, p. 599.

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ers' establishments with potters, stone-cutters, file-grinders, and other workers whose occupation necessitates the inhalation of dust particles and hence predisposes its members to consumption.

In view of this fact it may reasonably be regarded as a dangerous trade requiring special regulation.

This latter aspect of the case, which brings it into the same class as the Utah statute, is made prominent also in the concurring opinion of Judge Vann. He says:

> The evidence, while not uniform, leads to the conclusion that the occupation of the baker or confectioner is unhealthy and tends to result in diseases of the respiratory organs. As statutes are valid which provide that women or children shall not be employed in any manufacturing establishment more than a certain number of hours in a single day, so I think an act is valid which provides that in an employment which the legislature deems, and which is, in fact, to some extent, detrimental to health, no person, regardless of age or sex, shall be permitted or required to labor more than a certain number of hours per day or week. Such legislation under such circumstances is a health law and is a valid exercise of the police power.

The limitation of work in bake-shops to ten hours a day or sixty hours a week is thus justified as a health law whether it be looked at as a means of securing greater cleanliness in such establishments, and thus protecting the public health, or whether it be regarded merely as a means of protecting the health of the overworked bakers themselves.

A comparison of these decisions shows that they open an indefinitely large field to the exercise of the police power in the regulation of hours of labor. If a limitation of hours to ten a day for bakers can be justified as a means of protecting the community's bread, manifestly a large number of trades may be subjected to similar restrictions. It is certainly as important to the community to have its butchers, its cooks, and the thousands of employees of its transportation companies "well and not over-worked" as to have its bakers so. If the hours of those employed in mines and smelters may be limited to eight a day for the reason that longer hours are detrimental to health, what ground remains for opposing reasonable restrictions on hours

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in any employments? It is incontestable that excessive hours of work of any kind are injurious to health. If a broad view be taken, it must be conceded that the full vigor and efficiency of the classes that work predominantly with their hands can only be maintained if time is given them for mental exercise. It is even more true that the best health of brain workers demands a definite period each day for muscular development. For these reasons, if the argument of the federal supreme court in the Utah case be generally accepted, may not the courts be relied upon to give an ever wider field to legislative discretion in this department of labor regulation? May not any restriction on hours which is defensible on economic grounds be properly characterized as a reasonable health measure and therefore brought within the pale of the police power? As regards this important class of regulations, also, the contention that the question of constitutionality is merely another phase of the question of economic expediency appears to be abundantly justified.

Space will not permit a discussion of other classes of restrictive labor laws. The same principles which have caused the courts to withdraw their opposition to truck acts, special Sunday closing laws for barbers, and acts restricting hours in special employments, are leading them to admit a large number of other measures within the pale of the police power. The legal phrases used — that the purpose of the act must be to protect the health or morals of the community, that it must be based on a reasonable classification, *etc.* — merely disguise the fact that to the courts, as presumably to the legislatures which enact the laws, the really decisive consideration is whether the restrictions are calculated to promote the general welfare. The chief difference is that the courts — at least nominally — withdraw their opposition when they are convinced that a good presumptive case can be made out for the law on the ground that the ultimate determination as to whether it is expedient or not belongs to the legislature, while the latter body in passing the law registers its view that the measure *is* expedient.

I have not attempted to discuss in this article the merits or demerits of the various laws that have been referred to. Many economists would not approve of the recommendation of the

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United States Industrial Commission that "the [labor] provisions of the Utah constitution and statutes be followed in all the states,"[1] so that the eight-hour day for men employed in underground mines may become universal. All will agree, however, that we are much in need of further experience of the effect of regulations of this sort. Here as elsewhere it is only through experiment that the continually recurring differences between advocates of government regulation and of the *laissez-faire* policy can be adjusted. On this account the growing liberality of American courts in the scope they concede to the legislative police power should be ground for general satisfaction.

HENRY R. SEAGER.

[1] Report of the Industrial Commission, vol. v, p. 4.

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THE FINANCES OF THE TEXAS REVOLUTION.

ONE is puzzled to know whence came the revenues of Texas while a part of the Mexican confederacy. The constitution of Coahuila and Texas provided, indeed, that "the taxes of the individuals composing the state shall form its public revenue," and it can be gathered from the laws and decrees of the state that its inhabitants were subject to several sorts of taxes — stamped paper for legal documents, dues on land, an income tax and an excise, not to speak of customs duties. But though the workings of the fiscal system are far from clear, it is certain that numerous exemptions were granted from some of the taxes and that a great deal of liberty was allowed in the payment of others, so that there was surely no considerable income derived from these sources. When the revolution began, therefore, not only was there very little public money in the country, but the machinery of collection was stiff with inaction and poorly adapted to the important work of bringing in quick returns. And added to this, the resources of Texas were not of the sort to be readily converted into the sinews of war.

Under these conditions, then, how were the Texans enabled to establish a government, maintain an army and accomplish their independence? Mr. Henry M. Morfit declared to Secretary Forsyth that the means were derived principally "from the sympathy of their neighbors and friends in the United States and by loans upon the credit of the state,"[1] while Mr. Gouge, in his *Fiscal History of Texas*,[2] somewhat facetiously remarks that the various expedients of governments for raising funds in such exigencies may be resolved into "taxing, borrowing, begging, selling, and robbing and cheating," and that the Texans apparently determined to try all six. Before investigating this question it will be necessary to outline briefly the political changes in Texas during the revolution.

When hostilities began at Gonzales (October 2, 1835), procla-

[1] Morfit to Forsyth, September 4, 1836, in House Executive Document, 24th Cong., 2d Sess., no. 35, p. 16.

[2] P. 24.

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mations had already been issued for the election of delegates to a general consultation, which was to meet at San Felipe on October 16. Until this could assemble, the direction of affairs was assumed by a committee of five, composed of Messrs. William Pettus, Gail Borden, R. R. Royall, Joseph Bryan and C. B. Stewart. They organized themselves on the 11th into the permanent council and elected Mr. Royall president. Five days later, when the consultation should have convened, it was found that most of the members-elect had joined the army then marching on San Antonio. Since a quorum could not be obtained, an adjournment was taken to November 1 and a number of the members present, upon invitation, united with the permanent council. The council then acted as a sort of executive committee until the consultation was formally organized and relieved them of their duties. After a session of ten days the consultation provided for the organization of a provisional government, consisting of a governor, a lieutenant-governor and a council, and, bequeathing its problems to them, adjourned until the first of March. Before the day of their reassembling, however, there had been developed an almost unanimous desire for separation from Mexico, and new delegates were chosen with plenary powers to devise a permanent government. On the second of March they made a declaration of independence, and on the seventeenth adopted a constitution. Pending the ratification of this by the people, the convention appointed David G. Burnet president *ad interim*, and adjourned.

In view of these frequent changes one could hardly expect a settled financial policy to be developed. Measures looking toward the raising of revenue were necessarily experimental, and fortunately the revolution was over before it was proved that most of them were failures.

The permanent council was short-lived and lacked authority. The most that it could do was to make an effort to look after the immediate necessities of the few hundred volunteers who had taken the field. For this purpose, on October 14, William Hall was appointed "contractor for the army of the people," and instructed to begin contracting immediately for such things as were

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needed. He was to give his official receipt for supplies obtained, and upon refusal of parties of the second part to relinquish their goods on such terms, he was authorized to "press into service any valuables that may be necessary to a speedy and prompt coöperation with our forces at headquarters." On the same day the council borrowed $100 from James Cochran, and used it in the transportation of some "artillery" from Columbia to the army. The loan was to be repaid from funds in the hands of J. H. Money, treasurer of the municipality of San Felipe de Austin. Cochran consented to make additional advances on the same security, so that the council, in ordering the next day supplies of coffee, sugar and salt for the army, were able to assure the grocer that they had "some funds." In the end Cochran's loans reached the amount of $280, and this with $58.30 from land dues in the hands of Mr. Gail Borden and an advance of $36 by the president, seems to have been all the money handled by the permanent council.[1]

On the 20th, the appointment of a committee of five was moved "to inquire into the state of the public funds and, if necessary, report a plan for replenishing them." The committee was forthwith appointed, and recommended that six "public agents" be appointed to coöperate with the committees of safety in each jurisdiction in the collection of dues on land and stamped paper. They were also to negotiate loans whenever possible, and pledge as security therefor the public faith.[2] On the 22d Borden's powers were strengthened as collector in the jurisdiction of San Felipe, and he was instructed to publish a notice that drafts drawn by captains of companies — presumably for supplies — and approved by the president of the council would be accepted in payment thereof. It is likely that this was suggested by the committee.

On the 27th a more ambitious effort was made to secure funds by the appointment of Thomas F. McKinney to negotiate a loan of $100,000 in New Orleans.[3] But from this undertaking he

[1] Journal of the Proceedings of the Consultation, 11.

[2] *Quarterly of the Texas State Historical Association*, vii, 267.

[3] Royall to Austin, October 27, 1835. Austin Papers, N 20. Royall declared himself skeptical of McKinney's success, in case he accepted the commission, for the reason that sentiment in the United States as a condition of assist-

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excused himself on the ground that such a commission would need to be supported by unquestionable authority, which he feared would not be conceded to the permanent council.[1] Before this reply was received the council had merged into the consultation, to which it reported the result of its fortnight's labors, receiving therefor a vote of thanks. The sum of $374.30 had been expended, provision had been made for the efficient collection of the public dues, and supplies were on the way to the army. These consisted of "upwards of a hundred beeves, a considerable quantity of corn meal, and sugar, coffee, bacon, blankets, shoes and tent cloths."[2]

The consultation's tenure of power was even briefer than that of the permanent council. It first secured a quorum November 3, and adjourned on the 14th. When the call was issued for the assembly in August, it was expected that the principal work of the delegates would be to consult upon the attitude which Texas should take toward the centralizing measures of Santa Anna. This question, however, the rapid development of events had already determined, and it was quite a different program that was submitted to them. In his inaugural address the chairman, Dr. Branch T. Archer, suggested that they should confine their attention mainly to three things : they should promulgate and publish to the world the reasons why they had taken up arms and the objects for which they were fighting; they should consider the propriety of creating a provisional government; and they should secure the organization of a military system. Money, he said, would of course be needed for this, and agents should be ap-

ance in loans seemed to favor a declaration of independence, while the Texans at this time were determined upon allegiance to the federal constitution of 1824. But he consoled himself with the hope that at any rate volunteers and contributions might be obtained.

[1] McKinney to Royall, October 31, 1835. Archives of Texas, diplomatic correspondence, file 14, no. 1337. If upon its meeting the consultation saw fit to appoint him agent, McKinney said that he would be glad to serve. In the meantime, he thought the immediate necessities of the army could be supplied by the firm of McKinney & Williams and other local merchants.

[2] Journal of the Proceedings of the Consultation, 11, 12. For the paragraph in general, see the journal of the permanent council in the *Quarterly of the Texas State Historical Association*, vii, 249–278.

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pointed to get it. The first proposal was easily carried out, and the declaration was issued on the 7th; but the second was of greater magnitude, and occupied them throughout their session; while the third they passed on to their successors practically untouched.

In fact, the actual financial affairs of the consultation were scarcely more important than those of the permanent council. On the morning of the 6th, five members were appointed to provide for the necessities of the army, with authority "to borrow money or originate other debts for that purpose," and in the afternoon they reported a loan of $500 obtained from Thomas F. McKinney. Of this, $238 had been expended in paying drafts already drawn on the government, $20 was used in forwarding an express, and a balance of $242 remained in their hands. The following day the consultation declared "that Texas is responsible for the expenses of her armies now in the field, that the public faith of Texas is pledged for the payment of any debts contracted by her agents," and "that she will reward by donations in land all who volunteer their services in her present struggle;" but for practical purposes this meant little more than the expression of a willing spirit to meet her obligations if she were able.

At the same time a windfall arrived in the shape of a contribution from New Orleans. Mr. Edward Hall brought the news on the 6th that a committee in that city had raised $7,000 for the benefit of Texas. Half of it had been employed in equipping and transporting volunteers, but the balance, rapidly growing by other donations, was retained by the committee. Three days later we find the consultation appointing Hall agent for the purchase of war munitions and instructing him to draw on this committee for funds. Patriotic citizens also began to offer loans and securities in the hope that an hypothecation of individual property might prove more tempting to the money lenders than a bare pledge of the public faith. Stephen F. Austin tendered his "whole estate," to be mortgaged as the consultation saw fit; J. W. Fannin presented thirty-six slaves; and Ben Fort Smith offered eleven leagues of land for the same purpose.[1] On the 13th the house gratefully

[1] Austin to the consultation, November 4, 1853. Archives of Texas, diplo-

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accepted these proffers, but resolved to make use of them "only when imperiously demanded in the most extreme emergency."

The labors of the consultation practically ended with the enrolment of an ordinance creating a provisional government. By this instrument it was made the duty of the general council "to devise ways and means," and jointly with the governor it was authorized to contract loans "not to exceed one million of dollars," hypothecating the public land and pledging the faith of the country therefor. And they were invested with power "to impose and regulate imposts and tonnage duties, and provide for their collection under such regulations as may be the most expedient." They should appoint a treasurer and clearly define his duties; and finally, all monies due or accruing on lands and all other public revenues were placed at their disposal. As if this were not sufficient latitude, the governor and council were given "power to adopt a system of revenue to meet the exigencies of the state.[1]"

Upon the provisional government's assumption of power it was felt that the time had at last come for less tentative measures. The problem, as tersely stated by Governor Smith in his first message to the council, was "to call system from chaos"; but, "without funds, without munitions of war, with an army in the field contending against a powerful foe," the outlook did not appear to him particularly bright. As a preliminary step he thought a treasurer and other fiscal officers ought to be appointed.[2] The council agreed with him, and the committee of state and judiciary reported, on November 17,

that the immediate appointment of a treasurer to the provisional government, whose duty shall be clearly defined, is now devolving upon

matic correspondence, file 1, no. 6. Fannin to same, November 6, 1835, file 6, no. 559. Smith to same, November 8, 1835, file 18, no. 1708.

From a letter of Frost Thorn's to the consultation, dated November 1, 1835 (file 18, no. 1753), it would appear that Nacogdoches took the lead in these contributions. He said that $2,800 in cash and twenty-eight horses had been subscribed by the citizens of that jurisdiction, but if this money ever reached the consultation, no acknowledgment of it was made.

[1] Journal of the Proceedings of the Consultation, 7–48, *passim*.

[2] Journal of the Proceedings of the General Council, 12, 14.

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this body. Receipts and disbursements of public monies have been hitherto carried on without system, consequently without any other responsibilities to the public than that high sense of moral feeling which so eminently distinguishes the free sons of that country in revolutionary times from which our citizens have descended.[1]

Accompanying this report, the committee submitted an ordinance creating a treasury department. It was passed the following day, but was vetoed by the governor because the salary of the treasurer was fixed at $3,000 a year, an exorbitant one, as he thought, with the finances of the state in the condition they then were. Upon further deliberation, the council unanimously sustained his objection, and on the 24th D. C. Barrett proposed a new ordinance, obviating it. By a suspension of the rules this was passed the same day, and the governor approved it on the 26th. Besides defining the treasurer's duties, the law directed that disbursements should be made only upon the order of the general council, "approved and signed by the Governor and attested by the Secretary of the Executive." [2]

The election of a treasurer, Josiah H. Fletcher, completed the organization of the department,[3] but the method of drawing drafts, though a safe one, was a bit cumbersome, and the council passed an ordinance (December 2) providing that an order from the chairman of the finance committee should be a sufficient voucher to the treasurer for disbursements. The chairman was required to report such orders to the house, in order that the amount might be entered upon the journal, but the governor, with some justice, pointed out that this was an inadequate safeguard, and vetoed the bill. The council, however, was determined and passed it over his objection.[4]

But, perhaps in anticipation of this action, Mr. Millard, chairman of the committee on finance, shrinking either from the responsibility or, more probably, the labor involved, secured the passage of a resolution for the appointment of a committee of

[1] Journal of the Proceedings of the General Council, 19.

[2] *Ibid.*, 21, 23, 37, 43, 48, 49; Ordinances and Decrees of the Provisional Government, 24–26.

[3] *Ibid.*, 109.

[4] *Ibid.*, 112–113; Ordinances and Decrees, 46–47.

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public accounts. This was "to receive, audit, and register said accounts," and keep records showing the status of all claims, "whether passed, rejected, or under consideration," and report upon them twice a week to the general council.[1]

A fortnight later Mr. Royall, who had been appointed chairman of this committee, sought escape by creating the office of auditor, and his bill, amended to provide for a comptroller also, was passed December 26. The law defining the duties of these officers is a rambling one of twenty-one sections; but in brief it was declared the duty of the auditor to pass upon the validity of all claims, keep the books of the government and, after observing the proper formalities, draw drafts on the treasury to cover audited accounts. After approval by him claims under $4,000 had to be examined independently by the comptroller. In case of disagreement between the two, the auditor might appeal to the decision of the council if it were in session or, in its absence, to the governor. All claims for more than $4,000 he must submit first to the council or governor, and, when passed by them, to the comptroller for his approval — in this case, perhaps, merely formal. All drafts on the treasurer must be signed by the auditor and countersigned by the comptroller, and if the amount were greater than $4,000, they must bear in addition the approval of the governor or council. But the council reserved the right to order "payments on claims not within the provision of this ordinance." Twice a week — on Wednesday and Saturday — to prevent fraud, auditor and comptroller must make to each other reciprocal reports of claims audited and drafts signed, and once a week both were required to report to the general council or the governor. The governor objected to the clause which gave the council power of exempting certain claims from the operation of the law, but the bill was passed unchanged over his veto (December 29).[2]

The appointment of officers to collect, respectively, customs duties and dues on land completed the establishment of the fiscal administrative machinery.

But the provision of revenue was a matter of greater difficulty. The committee on finance estimated on paper an adequate income

[1] Journal of the Proceedings of the General Council, 145.

[2] *Ibid.*, 200, 205, 210; Ordinances and Decrees, 99–105.

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from sale of the public domain, taxes on land, a tax on slaves, an export duty on cotton and tonnage and tariff duties; but they were constrained to admit that, although the picture which they presented might be "flattering and exhilarating in the highest degree to the patriot and statesman, . . . yet the urgent, pressing, and unavoidable exigencies and immediate necessities of our state . . . require a fund to which it can immediately recur." To secure this, they could think of no project "possessing in a higher degree all the essential requisites of speedy operation, and combining celerity and certainty in its accomplishment, than that suggested by a loan." [1]

In the end this really did prove, though none too speedy in its operation, the country's chief means of securing ready money, but the council had no notion of trusting all their ventures to one bottom. To mention their experiments in chronological order: on November 27 an ordinance was approved granting letters of marque to privateers; on December 5 a general law provided for the negotiation of a million-dollar loan; a week later a system of tonnage and tariff duties was declared; on December 30 measures were taken for the efficient collection of land dues; on January 6 the sale of certain public property was ordered by resolution; and on January 20 an issue of treasury notes was authorized. To these sources of revenue must be added finally a number of donations. In discussing these measures donations will be considered first and loans will be postponed till the last.

Most of the donations came from the United States, and, though never very great, as an evidence of good-will they afforded encouragement to the Texans far out of proportion to their intrinsic importance. The contribution of the New Orleans committee during the session of the consultation has already been noticed, but at the same time similar committees were busy in Natchitoches and Mobile. November 15 the council acknowledged the receipt of a letter from D. H. Vail, of the former place, informing them that he had received "in different articles" about $800 for the benefit of Texas, and at the same time news came that in Mobile $2,000 had been raised.[2] On November 30 General Hous-

[1] Journal of the Proceedings of the General Council, 61–67. [2] *Ibid.*, 8.

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ton presented a gift of $100 from Mr. John Hutchins, of Natchez, Mississippi,[1] and some two weeks later we find the council taking steps to change a thousand-dollar bank note which, Gouge says, was a contribution from the United States.[2] In the meantime, commissioners had been dispatched to the United States for the purpose primarily of negotiating a loan, but with instructions among other things to receive donations, and late in February they reported a gift of $500 from three citizens of Nashville.[3] About the same time Samuel St. John, a rich cotton factor of Mobile, authorized the provisional government to draw on him for $5,000. He had visited Texas, he explained, in the summer of 1832 and had ever since retained a lively interest in her welfare, because of her peculiar facilities for cotton growing.[4] On March 7 the convention passed a resolution of thanks to H. K. W. Hill of Nashville for a gift of $5,000,[5] and on May 20 the citizens of Port Gibson, Mississippi, made a cash donation of $927.[6] As late as June 27, a Dr. Williams presented a donation of $650 from the United States,[7] but I have found no reference to other contributions, though it is not unlikely that others were made. The commissioners in their progress through the country appointed numerous local and general agents to solicit volunteers and donations, and the funds collected were employed in equipping those who volunteered.[8] With the exceptions noted, this seems to have been the form in which all the contributions mentioned reached the Texans.

[1] Journal of the Proceedings of the General Council, 78.

[2] *Ibid.*, 171; Gouge, Fiscal History of Texas, 32.

[3] Austin Papers, N 12.

[4] St. John to Governor Smith, February 22, 1835. Archives of Texas, diplomatic correspondence, file 16, no. 1586.

[5] Proceedings of the Convention at Washington, in Gammel's Laws of Texas, i, 848–849.

[6] Treasurer's report, August 7, 1836. Archives of Texas, D, file 29, no. 2844.

[7] *Ibid.*

[8] Stewart Newell, agent in Philadelphia, was instructed to use for this purpose all money collected before the middle of June. Austin Papers, N 5.

Mr. Henry M. Morfit, writing to Hon. John Forsyth, under date of September 4, 1836 (24th Congress, 2d Session, House Ex. Doc. no. 35, p. 15), says that several individuals have "unostentatiously presented $5,000, while numbers have contributed $1,000 each," but a diligent search through the archives has failed to corroborate this.

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In Texas itself the wealth of the citizens, as of the state, consisted in land. One is not surprised to learn, therefore, that with two exceptions they subscribed no cash. On November 1 Frost Thorn wrote to inform the consultation that the people of Nacogdoches had pledged in mass meeting the previous day twenty-eight horses and $2,800,[1] while a few days later San Augustine announced subscriptions of thirteen horses and $400.[2] No record is shown of the receipt of this money by the government, so it is probable that all was expended by the local committees in purchasing ammunition and in supplying volunteers from the United States who passed through east Texas on their way to the army.

In the latter part of March, when loans on satisfactory terms were almost despaired of, President Burnet proposed to several friends a plan to raise funds by selling individual property. Persons who donated land for this purpose were to take a receipt for their gift, and the government, when able, would repay them, either in money or, if the land had not been sold, by a retransfer of the land. James Kerr was the first to manifest his approval of this suggestion by surrendering (March 23) for the disposition of the government four hundred and eighty acres of land in De Witt's colony. The following day Mr. Gail Borden endorsed the plan, and expressed the opinion that a contribution of $100 was worth more than a subscription of $1,000. A circular from the office of *The Telegraph and Texas Register* gave publicity to the proposition, and exhorted the people to sell a small part of their property in order to save the remainder from the enemy. Four and a quarter leagues — including Kerr's gift — were subscribed immediately.[3] Shortly after this, however, Burnet decided that he had no authority to promise repayment of such advances, though he felt sure that Congress would be quite willing to do so. Accordingly, Retson Morris added a half league unconditionally.[4]

[1] Thorn to General Council, November 1, 1835. Archives of Texas, diplomatic correspondence, file 18, no. 1753.

[2] Journal of the Proceedings of the General Council, 7.

[3] Kerr to Burnet, March 23, 1836. Archives of Texas, diplomatic correspondence, file 24, no. 2369. Borden to same, March 24, 1836, file 22, no. 2157. Circular, file 4, no. 351.

[4] Archives of Texas, diplomatic correspondence, file 22, no. 2180.

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Before other contributions were made the battle of San Jacinto had been won, and the people considered their sacrifices no longer necessary.

Inasmuch as these land donations were made, nominally at least, in the expectation of repayment, it would perhaps be technically more accurate to call them loans. But the prospect of repayment was so remote that they were doubtless considered by the donors as free-will offerings. Practically it makes little difference how we regard them, for the reason that the government realized nothing from them, and it is doubtful whether formal transfers of title were ever made. They are of significance, nevertheless, as illustrating conditions of the time and the spirit of the people. "Deficient," as they were, says Kennedy,[1]

> in all the resources requisite for war, except moral energy and courage, the colonists themselves contributed, from their private means, whatever was calculated to be of use to the troops. Leaden water pipes and clock-weights were melted down for ammunition, and even the women cheerfully assisted in moulding bullets and making cartridges.

In granting letters of marque and reprisal the general council according to Gouge, "tried its hand at robbing," but, as he adds it could plead in extenuation "the precedents of the best established governments."[2] At any rate, the matter is of little importance, for if any privateers were actually put in commission nothing was ever heard of them. From the beginning the law was designed to provide defense rather than revenue, and this was soon rendered unnecessary by the acquisition of a regular navy sufficient to meet any naval operations from Mexico.[3]

The colonists turned naturally to a tariff as a revenue device, for the reason that Mexico had been spasmodically trying ever since 1832 to collect customs. In his first message Governor Smith recommended the establishment of a tariff, and the finance committee estimated an annual income of $125,000 from tonnage

[1] Texas, ii, 115.

[2] Fiscal History of Texas, 27.

[3] Journal of the Proceedings of the General Council, 26, 31, 75; Ordinances and Decrees, 23–24, 38; Archives of Texas, diplomatic correspondence, file 25, no. 2414.

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dues alone. No time was lost in introducing a bill. It was passed on the 8th, and approved on the 12th, but how much revenue it yielded is unknown.[1] In all likelihood it was very little. Thomas F. McKinney declared that all the merchants in the country had imported larger stocks than usual in anticipation of the law, and complained that he had been prevented from doing the same, because his partner, Mr. Williams, had neglected his own business in the United States to purchase supplies for the government.[2] The council, thereupon, to remedy the injustice, passed an act exempting from duty all goods actually shipped but not received by this firm before the passage of the act.[3] All promise of revenue from this law was permanently blighted on January 20, by making treasury notes acceptable for customs. Complaints soon began to come in, too, from the United States,[4] and since Texas was so largely dependent upon the good will of that country, it is likely that the enforcement of the law quietly ceased. Finally, the constituent convention decreed, March 12, 1836, that the provisional government had exceeded its authority in levying import duties, and ordered what had been collected to be repaid.[5]

The collection of land dues next occupied the attention of the council. The colonization law of Coahuila and Texas provided that

> new settlers shall pay to the state, as an acknowledgment for each *sitio* of grazing land, thirty dollars; for each *labor*, not irrigible, two and a half; and for each that is irrigible, three and a half; and so on proportionally, . . . but the payment thereof need not be completed under six years from settlement.

When hostilities began, J. H. Money, of the municipality of Austin, had in his possession from this source a balance of $296.70,[6]

[1] Journal of the Proceedings of the General Council, 14–200, *passim*; Ordinances and Decrees, 79–85, 86–87, 104–114.

[2] McKinney to Provisional Government, December 25, 1835. Archives of Texas, diplomatic correspondence, file 14, no. 1340.

[3] Ordinances and Decrees, 119–120.

[4] Edward Hall to Governor and General Council, February 4, 1836. Comptroller's department, Letters to Treasurer, vol. i, 11.

[5] Archives of Texas, A, file 4, no. 462.

[6] Report of J. H. Money, December 31, 1835. Comptroller's department, in Miscellaneous Papers of the Treasury Department, 1835–36.

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and most of this, as we have already seen, the consultation used. Considerable sums were also in the hands of the collectors at Nacogdoches, and a few days after its organization the general council appointed a committee to take charge of them. On November 27 Mr. Menard of this committee reported that he had secured from land dues $1,678.77½, and from the sale of stamped paper $250.[1] Grasping at straws, as they were, and seizing upon everything that promised a revenue, however insignificant, this report must have encouraged the council. An ordinance of December 30 authorized the appointment of "collectors of public dues" in each of the departments of Texas. But as a yielder of revenue the law was greatly impaired in efficiency by the provision that properly audited treasury orders should be receivable for such dues.[2]

Mr. Gail Borden was elected collector for the department of Brazos, and two of his reports are at hand. An incomplete one of July 31, 1836, shows that he had received at that time but $797.62½. Owing to the unsettled conditions, however, he had heard from only one deputy, Andrew Ponton of Gonzales. Some persons, too, had secured treasury orders with which to pay and had neglected to endorse them, so that he could not report such dues as paid.[3] Collections during the second half of the year were much better, and he was able to report a total on January 1, 1837, of $6,836.32.[4] This probably included the $797.62½ previously reported. Doubtless the greater part of this was in orders on the treasury. No report can be found from the department of Nacogdoches, but there was much opposition in that quarter to the closing of the land offices by the consultation, and on this account it is probable that few of the citizens paid their dues.

[1] Comptroller's department, in Miscellaneous Papers of the Treasury Department, 1835–36.

[2] Ordinances and Decrees, 114–117, 132–133.

[3] Borden to Hardeman, July 31, 1836. Comptroller's department, Letters to Treasurer, vol. i, 55–56. *Telegraph and Texas Register*, September 21 and 28, 1836.

[4] *Ibid.* 76, 77. Of this amount, $3,902.04 was collected in Austin's colonies, $1,607 in Austin and Williams's colony, $1,255.38 in DeWitt's colony, and $71.90 was collected by Thomas Gazley of the municipality of Mina.

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The council also tried, but with little success, to raise money by the sale of public property. This consisted almost entirely of land, but $229.50 was realized by the sale of a quantity of stamped paper to W. H. Steele on December 29,[1] and a few days later (January 2) Governor Smith requested the general council to make some disposition of "various goods" in charge of the commandant at Goliad. Their value, he said, was "considerable."[2] The military committee forthwith recommended a resolution, which was passed, authorizing Captain Dimmit to sell them at auction, but of the proceeds of the sale nothing is known. By the capture of San Antonio in December a quantity of supplies fell into the hands of the Texans, and these also were sold at auction. Members of the Texan army gave notes for their purchases to the amount of $1,271.99, and later these were charged against their account for service.[3] As a source of ready money the public land was a failure, too. In May, 1836, President Burnet authorized Thomas Toby & Brother of New Orleans to sell five hundred thousand acres at fifty cents an acre, but practically no sale was found for it. In another way, however, the public domain was very valuable — many volunteers were attracted from the United States by the liberal land bonus which the government offered them.

Finally it was decided to issue treasury notes, and Mr. Gouge thinks cheating none too harsh a term to apply to this expedient of the government. The act was approved January 20, and provided

> that the Treasurer shall immediately cause to be printed in a neat form and shall issue, in discharge of claims against the Government and drafts against the Treasury, the amount of one hundred and fifty thousand dollars in Treasury notes, . . . specifying on the face thereof, that they shall be received in payment for lands and other public

[1] Journal of the Proceedings of the General Council, 229; Report of Treasurer, November 28, 1835, to March 1, 1836, Comptroller's department, in Miscellaneous Papers of the Treasury Department, 1835–1836.

[2] *Ibid.*, 241.

[3] Auditor's report, January 8, 1836, Comptroller's department, in Miscellaneous Papers of the Treasury Department, 1835–36. Archives of Texas, D, file 26, no. 2591.

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dues, or redeemed with any monies in the Treasury not otherwise appropriated.[1]

Of course, with no money in the treasury, and little prospect of getting any, these notes were practically worthless from the day of their issue.

But from the beginning it was felt that a loan from the United States must be the chief hope of the country for money; and, as we have seen, Thomas F. McKinney refused a commission tendered him by the permanent council on October 27 to negotiate a loan of $100,000. The sentiment of the consultation is revealed in the inaugural address of the chairman: "It will be necessary," he said, "to procure funds in order to establish the contemplated government and to carry on the war in which we are now engaged; it will, therefore, be our duty to elect agents to procure those funds." Accordingly, two days before adjournment (November 12), B. T. Archer, W. H. Wharton and Stephen F. Austin were appointed commissioners to the United States, with such powers and instructions as the "governor and general council may deem expedient." [2]

The council was strangely dilatory in preparing these instructions. A select committee appointed for that purpose reported, November 21,

that upon considering the matter, they are unable to find any acts of the Convention or of this Council, whereon to base instructions for said agents, or any data which can guide your committee in an opinion of their duties, but from all the information they can obtain, your committee have concluded that the agents should receive their instructions from the Executive; but in order to enable the Governor to give the necessary instructions, an ordinance should first be originated by the Committee of State, and passed and approved, defining in general the powers and duties of the agents. . . . But your committee can not advise that the Committee of State be instructed upon this subject with propriety, until the reports of the several committees on the Military, Navy, and Finance have been received and passed.[3]

[1] Ordinances and Decrees, 129–130.
[2] Journal of the Proceedings of the Consultation, 7, 37.
[3] Journal of the Proceedings of the General Council, 42.

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In view of the fact that the committee took "the liberty," on account of "the emergency and great press of business," to submit an ordinance empowering Mr. McKinney to borrow $100,000, this report appeared a bit inconsistent. So at least thought Governor Smith, for he pointed out the impropriety of employing agents with duties which might conflict with the powers of the general agents already appointed, and vetoed the bill. But the council without a dissenting vote passed it over his veto and it became effective November 26.[1] Any confusion which might have ensued was obviated by McKinney's making no effort to carry out the law.

At the end of nearly two weeks the council had passed to its third reading an ordinance to create a loan of a million dollars, but there it seemed likely to stop, when the governor took up the matter thus: "It must be acknowledged by all," he said in his message of December 4,

> that our only succor is expected from the East, where as yet we have not dispatched our agents. Sufficient time has elapsed since the rising of the Convention for them, by this time, to have arrived in the United States. They have called on me in vain day after day, time after time, for their dispatches, . . . and they are not yet ready. I say to you, the fate of Texas depends upon their immediate dispatch and success. . . . Permit me to beg of you a suspension of all other business, until our Foreign Agents are dispatched.[2]

Thus bestirred, the council immediately passed the bill providing for a loan, and the next day passed an ordinance outlining the instructions which the governor should give the commissioners. Both bills were approved on December 5.

For the loan, the governor was required to make out ten bonds of $100,000 each, payable in not less than five nor more than ten years; and with these the commissioners were "by all proper ways and means, by sale or pledge" to secure the loan, "or such part thereof as they can effect, upon the best terms the market affords, not exceeding ten per cent per annum." In case these bonds should not be accepted as sufficient security, the commis-

[1] Journal of the Proceedings of the General Council, 50–53; Ordinances and Decrees, 18. [2] *Ibid.*, 97, 103, 104.

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sioners were instructed "to pledge or hypothecate the public lands of Texas, and to pledge the public faith" — everything, in fact, that Texas possessed.[1] With this authority, the governor lost no time in issuing commissions to the agents, and their private instructions were ready for them on December 8.[2] But more than two weeks elapsed again before these gentlemen sailed for New Orleans.

In the meantime, a loan for the use of Texas had already been secured by Mr. Hall from William Brookfield of New Orleans — a small one, to be sure, $1,100, but to the Texans it probably seemed an earnest of the success of their agents when these should reach the United States.[3]

On January 10 the commissioners notified Governor Smith that they had arranged for two loans aggregating $250,000. The fact that this could be done in New Orleans, where the Texas situation was so well known, they considered particularly encouraging and of good augury for success in other parts of the United States. It will be seen from their terms that these so-called loans were really nothing more than contracts for the purchase of five hundred thousand acres of land at fifty cents an acre; but the commissioners thought themselves very fortunate to get money on any terms. "In fact, rather than have missed the loan," they wrote, "we had better have borrowed the money for five years and given them the land in the bargain." They were of the opinion, moreover, that the loan would increase the interest in Texas; the lenders, they said, had already offered to land in Texas within six weeks five hundred volunteers.[4]

[1] Ordinances and Decrees, 44, 45, 52–54.

[2] Austin Papers, N 2. Besides negotiating this loan, they were to make arrangements for fitting out a navy, procure supplies for the army, receive donations and, finally, proceed to Washington and find out the attitude of the government toward Texas. They were to learn whether any interposition might be expected from the United States, or whether "any ulterior move on our part would be more commendable and be calculated to render us more worthy of their favour, or whether by any fair and honorable means Texas can become a member of that Republic." In short, they were to learn whether, if Texas should declare independence, the United States would immediately recognize it and form an offensive and defensive alliance.

[3] Hall to Governor and General Council, January 9, 1836; Comptroller's department, Letters to Treasurer, vol. i, 11; Journal of the Proceedings of the General Council, 232.

[4] Austin, Archer and Wharton to Smith, January 10, 1836. Austin Papers, N 15.

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The first loan, of $200,000, was subscribed by ten men, four of whom were from Cincinnati, three from Kentucky, two from Virginia, and one from New Orleans.[1] Ten per cent of the amount was paid down; the balance was to be paid upon ratification of the contract by the convention, which had been called for March 1. The amount advanced was to bear eight per cent interest, and the lenders might, if they chose, take land in repayment for this and future instalments at the rate of fifty cents an acre. In case they elected to take land — and all of them intended to — the government was to survey and plot it in tracts of six hundred and forty acres each, and they must make their selection within two months after publication of a notice that the lands were ready. Article fifth provided that "no grant or sale of land shall be made by the government of Texas, from and after the date hereof, which shall not contain a full reservation of priority for the location to be made under this loan," but this was not to apply to vested rights already existing. Article sixth, a little more sweeping, declares that "none of the public lands are to be offered at public or private sale until after the locations hereinbefore provided for shall have been made." For the faithful performance of this contract, the commissioners pledged "the public lands and faith of the government of Texas," but even after its confirmation the lenders reserved the right of declining to pay the balance.[2]

The second loan was for $50,000, and seven of the twelve subscribers were residents of New Orleans, while three were from Virginia and two were from Kentucky.[3] This loan was supposed to have been in cash, but Austin for some reason estimated that it would yield them net but $40,000.[4] Gouge, however, who

[1] From Cincinnati, Thomas D. Carneal subscribed $40,000, Lewis Whiteman, $5,000, Paul Anderson, $5,000, and James F. Erwin, $5,000; from Kentucky, James N. Morrison subscribed $10,000, Robert Triplett, $100,000, and George Hancock, $5,000; from Virginia, William F. Gray and James McCulloch subscribed $10,000 each; and Alfred Penn of New Orleans also subscribed $10,000.

[2] Dienst Collection, ii, 11. The original MS. contract can be found in the archives of Texas, D, file 29, no. 2828.

[3] The subscribers were: from New Orleans, Gabriel W. Denton, $10,000, Jacob Wilcox, $10,000, James Huie, $5,000, Thomas O. Meux, $2,500, Christopher Adams, Jr., $1,000, and Thomas Banks, $1,000; from Virginia, William F. Ritchie, $8,500, Howard F. Thornton, $1,000 and Jeremiah Morton, $3,000; from Kentucky, James Erwin, $5,000 and Robert Triplett, $2,000.

[4] Austin to McKinney, January 21 1836. Austin Papers, N 10.

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wrote from documents, some of which are not now accessible, says that the amount actually received was $45,802.[1] The conditions of this loan were the same as those of the first, except that priority of location was reserved to subscribers to the first, and that the commissioners pledged their personal property for the ratification of this contract by the convention.[2]

To the lenders this was simply a gigantic land speculation. They bound themselves by mutual agreement not to sell to any outsiders for less than $1.25 an acre, and began forthwith to "boom" Texas lands both by letter and in the public prints.[3] The Texans were at first glad enough to get money on any terms, and such expressions as were made at the time favored prompt ratification of the contracts in order that the remaining instalments might become available. But before the convention met considerable opposition was being manifested to the provision which secured to the lenders prior rights of location. This feeling was so strong in the convention that Mr. Robert Triplett, on behalf of himself and the other stockholders, proposed a compromise relinquishing all such rights in return for certain compensation;[4] but the organization of a government occupied the attention of that body until its adjournment, and action upon the matter was referred to the president and his cabinet.

One of the first acts of President Burnet apparently was to ask each member of his cabinet for a written opinion on the subject of ratification.[5] All opposed it, and on April 1 Burnet himself wrote to Triplett and Gray, who were representing the lenders, and summarized their objections. The government, he said, was anxious to preserve the faith of the republic and would make any reasonable sacrifice to do so; it realized the circumstances under which the loans were made and hesitated, therefore, to avail itself of the undoubted legal right to disavow them; but the fifth article would paralyze future land sales; the agents had exceeded their

[1] Gouge, Fiscal History of Texas, 53.

[2] Dienst Collection, ii, 12. The original MS. contract can be found in the comptroller's department, in file "relating to the $50,000 loan."

[3] Speech of Triplett to the Convention. Comptroller's department, in file "relating to the $200,000 loan."

[4] *Ibid.*

[5] These opinions may be found in the archives of Texas, D, file 29, no. 2888.

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instructions in making the contracts; and finally, the government doubted its right to alienate the public lands. For these reasons the president and cabinet refused to ratify the loans and proposed to refund the money already advanced with twenty per cent interest, payments to be made in two instalments, six months and one year from date. The "faith and credit of the republic" was pledged for these payments,[1] but the lenders wanted land, and Triplett, who had already submitted numerous proposals of compromise, finally secured the acceptance of one on the same day that Burnet's letter was written.

By the terms of the compromise, the right of prior location was surrendered by the lenders in return for a bonus of thirty-two leagues of land, which was to be distributed to them in proportion to their paid up subscriptions. As for the rest of the loan, they might pay it or not as they chose.[2] The stockholders as a rule were inclined to accept the compromise, and a number of them, in fact, on May 25 voted to do so.[3] They also intended, they afterward said, to advance the balance of the loan; but dissatisfaction arose over the form of the scrip which the government issued to them and, before this could be adjusted, the government authorized Thomas Toby & Brother to sell five hundred thousand acres of land at the same price at which it was offered to the lenders — fifty cents an acre. This destroyed the monopoly which they expected to enjoy and ruined their market, so that they declined to buy more.[4] There followed a good deal of bickering on both sides, the government and the lenders charging each the other with bad faith, but by acts approved respectively June 3, 1837, and May 24, 1838, Congress made appropriations of land at fifty cents an acre to pay the two loans, and thus closed the most important chapter in the finances of the revolution.

[1] Burnet to Triplett, Gray *et al.*, April 1, 1836. Archives of Texas, diplomatic correspondence, file 22, nos. 2164 and 2185.

[2] Dienst Collection, ii, 27. The original MS. of the compromise is in the comptroller's department, in file "relating to the $50,000 loan."

[3] Copy of the compromise in the comptroller's department, in file "relating to the $200,000 loan"; also Triplett to Jack, August 19, 1836. Archives of Texas, diplomatic correspondence, file 18, no. 1796.

[4] Triplett to Jack, August 19, 1836. Archives of Texas, diplomatic correspondence, file 18, no. 1796.

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The next loan, $1,000, reached the treasury from the hands of Mr. G. C. Childress. Whether it was advanced by Childress personally or obtained by him as agent in the United States is not clear.[1]

But the commissioners, greatly encouraged by their success in New Orleans, continued their activities in the United States. They were offered a loan of $50,000 in Mobile on the same terms as the New Orleans loan, but for some reason nothing ever came of it.[2] Elsewhere they were not so well received. Men hesitated to risk their money in Texas until a declaration of independence was made, and though the commissioners urged this step upon the government time after time, no attention was paid to them. Indeed, as late as April 24, Austin complained that they had heard from the government not "one word."[3] To make matters worse, there spread through the country rumors of the unchecked advance of the Mexicans and of the unfortunate quarrel between the governor and council, and it is not strange that the most strenuous efforts of the commissioners were in vain — although, as Wharton said, "we offer to the lenders to pledge all we have on earth, even to our wearing apparel."[4]

On April 11 Austin made an ingenious proposition to President Biddle of the United States Bank for a loan of $500,000.[5] Biddle sympathized with the Texans, but, needless to say, his business conscience could not accept Texan bonds as bankable security. On the 15th, Austin made a frantic appeal to President Jackson and Congress for a share of the $37,000,000 surplus in

[1] Treasurer's report, August 7, 1836. Archives of Texas, D, file 29, no. 2844.

[2] Commissioners to Governor Smith, February 16, 1836. Austin Papers, N 29.

[3] Austin to Bryan, April 24, 1836 (copy). Archives of Texas, diplomatic correspondence, file 1, no. 41.

[4] Wharton to Smith, April 9, 1836. Archives of Texas, diplomatic correspondence, file 21, no. 2001.

[5] Austin Papers, N 15. The proposal was to deposit in the United States bank Texas bonds for $500,000, bearing eight per cent interest for ten years, upon which the bank should issue stock certificates at $100 each for the same amount. These stocks were to be offered to the public for a cash payment of $25, with notes at sixty, ninety and a hundred and twenty days for the balance. The notes were to be discounted by the bank, and all the money thus obtained should be paid over to the commissioners. At the end of five years the state would begin the redemption of the bonds, and would take up one-fifth annually.

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the national treasury, but naturally nothing came of that.[1] Two weeks later arrangement was made for a loan of $100,000 in New York on the same plan as the New Orleans loans. The lenders in this case had the option of taking land in repayment at twenty-five cents an acre, but since the expense of issuing stock certificates and surveying the land was to be borne by them, it is doubtful whether they enjoyed any advantage over the former lenders. Ten per cent of the loan seems to have been paid,[2] but only $7,000 can be accounted for. Austin deposited $5,000 with William Bryan in New Orleans, June 12,[3] and $2,000 was paid to Wharton.[4] The commissioners themselves admitted that they did not expect this loan to be ratified, "unless the prospects of Texas were gloomy even to desperation."[5]

Thus it is evident that the actual cash cost of the war of Texan independence was not great. The treasurer reported on March 1, 1836, that he had received and expended since November 28, 1835, $3,981.85. This amount was yielded principally by the revenues of Texas, but if any other sums ever came from the same source, the fact is not revealed by the records.[6] Donations it seems certain did not exceed $25,000, and much of this was in kind; while the loans amounted, it was said, to $100,000.

The total indebtedness of the government at the end of August, 1836, was estimated by the treasurer at $1,250,000. Of this amount there was due for loans $100,000, on account of the navy $112,000, to the army $412,000, for supplies $450,000, and for civil and contingent expenses $118,000. The remaining $60,000 is not itemized.[7] Some of these claims were paid in land, but the

[1] Raines's Year Book for Texas, ii, 435, 436. The letter is addressed to "Andrew Jackson, Martin Van Buren, Richard M. Johnson, John Forsyth, Lewis Cass, T. H. Benton, and to any member of the Cabinet or Congress of all parties and all sections of the United States."

[2] Treat to Austin, July 30, 1836. Austin Papers, N 15.

[3] Accounts of the commissioners. Austin Papers, N 1.

[4] Treat to Austin, July 30, 1836. Austin Papers, N 15.

[5] Austin, Archer, and Wharton to Burnet, July 21, 1836. Archives of Texas, diplomatic correspondence, file 1, no. 47.

[6] Treasurer's report, November 28, 1835, to March 1, 1836. Comptroller's department, in Miscellaneous Papers of the Treasury Department, 1835–1836.

[7] Estimate of Public Debt, August 26, 1836. Comptroller's department, in Miscellaneous Papers of the Treasury Department, 1835–1836.

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most of them were discharged with treasury notes, which subsequently were unmercifully scaled and redeemed. Such debts as remained unpaid at the time of annexation were paid from the ten million dollars which the state received from Congress in 1850.

In the end, therefore, notwithstanding the importance of the stake, it is easily seen that the cost of the revolution was trivial. And one is inclined to marvel with Mr. Morfit that Texas could have carried on "with so little embarrassment to her own citizens or her treasury" a successful war.

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A GOLD STANDARD FOR THE STRAITS SETTLEMENTS.

THE decade from 1870 to 1880 was noteworthy in monetary history for the extensive substitution throughout the western world of a gold standard currency for the previously dominant bimetallic standard. The ten years beginning with the closing of the Indian mints in 1893 will in like manner be noteworthy for the extensive substitution in the eastern world of the gold standard for the silver standard which had theretofore existed throughout almost the entire Orient from time immemorial.

Among the most recent of oriental countries to undertake the adoption of a gold standard currency is the Straits Settlements. This British colony, composed of Singapore, Penang, Malacca and their dependencies, is one of the great entrepôts of the shipping trade of the Orient. Like most eastern countries it has had a varied monetary experience.[1] The tin "pice," the various kinds of silver rupees, the Dutch rix dollar, the Japanese copang, the Carolus dollar of Spain, the Mexican and British dollars and their kindred South American coins, as well as sterling coins and money coined by the Straits Settlements themselves, have all had at one time or another a wide circulation in the Malay peninsula. From early in the sixteenth century until the present time, however, in spite of several attempts to displace it,[2] the principal medium of exchange and the real money of account of the Straits Settlements has been the old Spanish dollar or some of its illustrious descendants like the Mexican and British dollar.

In 1867, the year of the transfer of the Straits Settlements from the control of the Indian government to that of the secretary of state for the colonies, an ordinance was passed repealing all laws making Indian coins legal tender and declaring that, after April 1 of that year, "the dollar issued from her Majesty's mint at Hongkong, the silver dollar of Spain, Mexico, Peru and Bolivia, and any other silver dollar to be specified from time to

[1] An excellent brief historical treatment of the Straits Settlements currency will be found in Chalmers' Colonial Currency, chap. 38.

[2] *Ibid.*

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time by the Governor in Council, shall be the only legal tender" with the exception of certain subsidiary coins.[1] Since 1871 subsidiary coins for the Straits Settlements have been struck by the royal mint. An order in council dated October 21, 1890, repealed all previous laws with reference to legal tender in the colony and declared the Mexican dollar the standard of value, at the same time giving unlimited legal tender to the Japanese yen, the Hongkong dollar and half-dollar and the American trade dollar. Prior to the passage of the currency law of 1903 two subsequent orders in council of importance, relative to the currency, were passed under dates of February 2, 1895, and October 20, 1898. These orders taken together removed the legal tender quality from the American trade dollar and the Japanese yen, reaffirmed the law making the Mexican dollar the standard coin and declared that the Hongkong dollar and the recently coined British dollar should be legal tender and be treated as equal to the standard dollar. The Straits currency thus established was, with a slight modification, adopted by the Federated Malay States.

About the beginning of the calendar year 1903 the actual currency of the Straits Settlements, the Federated Malay States and Johore was roughly estimated as follows:[2]

(1) About thirty million British and Mexican dollars, of which by far the larger part was British dollars, and of which nearly a third represented coin held in reserve against the government's note issue.

(2) Nearly seven million dollars of Straits Settlements subsidiary coins, of which it was officially estimated that something like $300,000 had been shipped out of the country.

(3) An unknown amount of copper coins, the remainder of a total coinage since 1871 officially stated at 1,887,500 dollars (nominal), of which large quantities had been shipped out of the country.

(4) About thirteen million dollars of government notes.

The effect of the fall in the gold price of silver was similar in the Straits Settlements to what it was in India, Mexico and the other silver standard countries of the world which had extensive

[1] Report of the Straits Settlements Currency Committee, London, May, 1903, pp. 4 and 5.

[2] *Ibid.*, pp. 5 and 6.

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trade relations with gold standard countries. The evils resulting to local business from the rapidly falling and fluctuating exchange with gold standard countries finally became so serious in 1893, after the closing of the Indian mints and the calling of the extra session of the Congress of the United States to consider the repeal of the Sherman law, that the British colonial secretary telegraphed to the governor of the Straits Settlements for a report as to possible remedial measures in the direction of securing for the colony greater stability of exchange. In response to this telegram a special committee was appointed by the governor to investigate local monetary conditions and to suggest remedial measures. The committee examined a considerable number of witnesses, whom they considered "fair representatives of the thinking men of the colony of all classes," and found that, with the exception of the majority of the Chinese traders, the witnesses examined were "mostly in accord in declaring that the fall in exchange has been disadvantageous to these Settlements." In spite of this fact, however, the committee was unable to agree upon any proposition favoring the introduction of the gold standard, and their report was divided. Half of the twelve members of the committee favored a gold standard, five of them advocating the introduction of the rupee, upon the plan which had at that time but recently been adopted by India, provided, however, that that plan should prove a success in India. The other half of the committee, including all the native members, favored a continuation of the silver standard.[1]

From 1893 to 1897 there was considerable agitation and newspaper discussion in the Straits Settlements concerning the advisability of adopting a gold standard, but nothing came of it until 1897, when on August 25 the committee of the Singapore chamber of commerce, by a unanimous vote, adopted a resolution favoring the establishment of a fixed par of exchange with gold countries, and appointed a committee "to enquire into the local currency with the view of calling attention of government to the question of converting the Straits currency to a gold standard."

[1] A copy of the report of this committee is given in Appendix xvi of the Minutes of Evidence and Appendices of the Straits Settlements Currency Committee, London, May, 1903.

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The essence of the recommendations of this sub-committee may be summed up as follows: [1]

(a) The adoption of the English sovereign as the basis of the new currency "with a Straits dollar — fixed at the value of 2*s.* — subsidiary to it." The existing subsidiary silver coinage to continue unchanged except for being placed upon a gold basis.

(b) The government

> not to let its intention be known, and, when a decision is arrived at, to pass a law at one sitting of the legislative council, and immediately thereafter issue a notification to the effect that during a term sufficiently brief to prevent importation, all dollar coins then legally current in the colony would be received at certain specified places and government currency notes given in exchange; and that, after the expiry of such term, the British, Mexican, and other dollars in circulation would be demonetized;

the Federated Malay States to promulgate the same law simultaneously.

(c) From the stock of silver obtained by the government from its exchange of notes for British and Mexican dollars a limited supply of the new two-shilling dollars to be coined, these dollars to contain an amount of silver of from sixty to seventy per cent of that contained in the British and Mexican dollars, the seigniorage to accrue to the gold reserve.

Nothing of any consequence in the way of monetary reform developed from the above plan. It was severely criticised by the governor, by the president general of the Federated Malay States, and by many others in high position.[2] This criticism was based on the following grounds:

(1) The expense involved in maintaining such a token coin at a two-shilling value and in exchanging the new dollar for the old one.

(2) The danger of counterfeiting, which in the Orient would be great in the case of coins, like the ones proposed, whose nominal value was so far above their bullion value.

[1] *Ibid.*, Appendix xvii.

[2] *Ibid.*, Appendi xxviii, no. 12. See also Appendix no. 54 of the Index and Appendices to the Evidence Taken before the Committee Appointed to Enquire into the Indian Currency, London, 1889.

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(3) The difficulty of the government's keeping its intentions secret until the final passage of the law; and on the other hand, if the public were notified in advance, the danger of an inundation of British and Mexican dollars, to take advantage, either legally or illegally, of the two-shilling dollar exchange offered.

(4) The difficulty of inducing the natives, who were accustomed to judge the value of a coin by its weight, to take, at a higher value, a coin of a little more than half the weight they were accustomed to.

(5) The difficulty of inducing the native holders of the old dollars, especially those of the Federated Malay States, to exchange them for a paper currency with which they were not familiar.

As a result of these and other similar objections, nothing came of the plan proposed.

The rejection of this plan gave a quietus to the subject of a gold standard for the Straits Settlements, as far as any official action was concerned, until the middle of 1902. On June 9, 1902, the Singapore chamber of commerce again addressed a letter to the colonial government asking whether

> in view of the recent serious decline in the value of the dollar current here, the violent fluctuations in the price of silver and the extreme uncertainty as to the future of this metal, all of which are not only causing great inconvenience to the trade of the colony but constitute grave obstacles to the development of its natural resources by stopping the flow of capital from other parts of the world,

the government were prepared to investigate into "the feasibility and expediency of securing fixity of exchange."[1] This letter, together with certain subsequent communications upon the subject, was forwarded to the colonial secretary in July.

The result of these communications was that a committee composed of Sir David Barbour, Mr. W. Adamson, Mr. G. W. Johnson and Mr. W. Blaine were appointed by the secretary of state for the colonies to consider:[2]

[1] Report of the Straits Settlements Currency Committee, p. 7.

[2] *Ibid.*, p. 3.

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(1) The expediency or otherwise of introducing a gold standard of currency in the Straits Settlements and the neighboring Malay States.

(2) The practicability of making the change and the steps which in the opinion of the committee should be taken to effect this object if the change should be decided upon.

The committee began its hearing in London, November 13, 1902, and continued taking testimony until about February 1, 1903. During that time a mass of testimony both verbal and written was taken. The committee's sittings having been in London, it was necessary that the greater part of the testimony should be that of English merchants having trade experience with the Straits Settlements or with the East generally — the class of persons who, it will be noted, naturally would have been most favorable to the establishment of a gold standard. The masses of the population, represented by the natives, and by the Chinese, who do a large part of the business of the Straits Settlements and of the Federated Malay States, could not be heard directly; while through petitions and resolutions they took comparatively little part in the controversy — in fact they were for the most part ignorant of the entire matter. On the whole the evidence seems to show that the weight of opinion among the more intelligent of these classes was on the side of maintaining the *status quo*. The European community, with the exception of the bankers and of a few exporters, were almost a unit in favor of a gold standard.

A detailed discussion of the evidence brought forth in this testimony and published in the minutes of the committee's report is not necessary. The exhaustive discussion during the last decade or more of the effects of a fluctuating standard of value has made knowledge of the evils connected therewith general. The report of the local committee appointed in 1893 to consider the subject of the Straits currency declared that "all the effects remarked on in paragraphs 21–28 of the report of Lord Herschell's committee are in operation in the Straits." This statement was nearly as true in 1903 as in 1893. A few salient features of the conditions leading to the legislation of 1903 may, however, be briefly referred to.

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The annual fluctuations in the gold value of the local money during the period 1891 to 1901 are shown in the following table.[1]

RATES FOR BANK BILLS ON LONDON.

(Four Months Sight.)

YEAR.	HIGHEST.	LOWEST.	AVERAGE.
	s. d.	*s. d.*	*s. d.*
1891	3 $6\frac{1}{4}$	3 $1\frac{3}{8}$	3 3
1892	3 $1\frac{3}{8}$	2 $9\frac{1}{8}$	2 $10\frac{5}{8}$
1893	2 $9\frac{5}{8}$	2 $4\frac{1}{2}$	2 $7\frac{3}{8}$
1894	2 $3\frac{7}{8}$	2 $\frac{1}{8}$	2 $1\frac{3}{4}$
1895	2 $3\frac{1}{16}$	1 $11\frac{1}{2}$	2 $1\frac{1}{2}$
1896	2 3	2 1	2 $2\frac{1}{8}$
1897	2 $1\frac{13}{16}$	1 $9\frac{9}{16}$	1 $11\frac{15}{16}$
1898	2	1 $10\frac{3}{16}$	1 $11\frac{5}{16}$
1899	2 $\frac{5}{16}$	1 $11\frac{3}{8}$	1 $11\frac{15}{16}$
1900	2 $2\frac{3}{16}$	1 $11\frac{3}{4}$	2 $\frac{1}{2}$
1901	2 $1\frac{5}{8}$	1 $9\frac{7}{8}$	1 $11\frac{11}{16}$

The Straits Settlements were not, like India, practically forced to the establishment of a fixed par of exchange by the existence of a large public debt payable in gold. The Straits government itself had no public debt, while the small debt of the Federated Malay States was a local interstate debt, payable in the local silver currency. Both governments, however, regularly had large sterling obligations to meet in the purchase of supplies, while the salaries of all the higher officials of the Straits government were on a sterling basis.[2] Inasmuch as these charges remained relatively fixed regardless of the fluctuations in the value of the ocal dollar, while the gold value of the revenue received tended to fall rapidly with the fall of exchange, the government found itself handicapped in meeting its obligations.

The relative importance of the Straits Settlements' trade during the period from 1891 to 1901, with gold and silver countries

[1] Minutes of Evidence and Appendices of the Straits Settlements Currency Committee, p. 143.

[2] *Vide* Colonial Office List, 1903, pp. 309–311, and August Huttenbach, The Silver Standard and the Straits Currency Question, Singapore, 1903, pp. 9 and 10.

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respectively, may be seen from the following figures representing imports and exports of merchandise inclusive of intersettlement trade and exclusive of treasure.[1]

TRADE WITH SILVER STANDARD COUNTRIES.
($,000 omitted.)

YEAR.	EXPORTS.	IMPORTS.	TOTAL EXPORTS AND IMPORTS.
1891	45,579	83,937	129,516
1892	48,140	93,946	142,086
1893	44,992	83,891	128,883
1894	53,771	94,068	147,839
1895	55,434	96,877	152,311
1896	57,079	96,260	153,339
1897	57,299	98,769	156,068
1898	64,747	98,615	163,362
1899	68,710	121,945	190,655
1900	76,294	135,402	211,696
1901	79,965	142,033	221,998

TRADE WITH GOLD STANDARD COUNTRIES.
($,000 omitted.)

YEAR.	EXPORTS.	IMPORTS.	TOTAL EXPORTS AND IMPORTS.
1891	68,910	44,895	113,805
1892	74,693	43,436	118,129
1893	89,538	68,547	157,085
1894	104,971	88,613	193,862
1895	105,394	88,468	193,862
1896	104,698	89,936	203,634
1897	114,878	99,591	214,469
1898	129,394	124,387	253,781
1899	157,145	133,346	290,491
1900	174,621	154,994	329,615
1901	176,808	150,776	327,584

While the figures show a healthy growth of trade in general, it is noteworthy that the greater proportion of the foreign trade

[1] Minutes of Evidences and Appendices of the Straits Settlements Committee, pp. 130 and 131.

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at the close of the period was with gold standard countries, that the trade with those countries was a rapidly growing one, that its growth was more than commensurate with that with the silver standard countries, and that despite the severe handicap given to the import trade with gold standard countries by a falling exchange, the reported imports from those countries had been for some time larger than those from silver standard countries, while the growth of the former had been much the more rapid. As would have been expected on a falling exchange, the exports to silver standard countries lagged far behind those to gold standard countries.

While it is doubtless true that most of the trade with gold standard countries appears in the colonies' trade statistics, and that a considerable part of what Mr. August Huttenbach calls the "Hinterland trade" with silver countries does not appear, and that dollar for dollar the trade with the silver standard countries is somewhat more important to the colony than that with the gold standard countries, it is none the less true that the Straits' foreign trade both actually and prospectively should logically have placed it among the gold standard countries long before 1903.[1]

One of the most serious disadvantages of the existing silver standard, the committee believed, was the discouragement to the investment of foreign capital in the colony, due to the apparent, and in many cases real, decline in the sterling value of capital invested in the colony.

These facts, together with the element of uncertainty and speculation brought into business by a fluctuating exchange, the feeling that exchange had fallen to the point beyond which a further fall would cease to be profitable to the export trade, and the movement on the part of neighboring countries toward a gold basis, forced the committee to the conclusion that the time was ripe for placing the Straits Settlements, the Federated Malay States and Johore upon a gold standard.

Three principal methods of making the change to the gold standard were considered. The plan suggested by the Sing-

[1] *Vide* on this subject August Huttenbach, Memorandum on the Straits Settlements Currency Scheme, Penang, August 10, 1903, pp. 2–3.

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apore chamber of commerce in 1897 was believed to be impracticable for the reasons already stated. The introduction of the Indian currency system, which was recommended by five members of the local currency committee in 1893, involving as it did a change in the unit of value from the dollar to the rupee, the adoption of a currency which would be largely controlled by another country, and whose bullion value was far below its face value, found comparatively few supporters in 1893, whatever might have been the merits of the plan ten years before.

The plan finally recommended by the unanimous vote of the committee may best be briefly stated in their own words:[1]

A special Straits dollar of the same weight and fineness as the British dollar at present current in the East [to be gradually substituted] for the Mexican and British dollars, the latter dollars . . . . [to be] demonetized as soon as the supply of the new dollars is sufficient to permit of this being done with safety. Under this plan it will be necessary for the Straits to obtain a considerable supply of the new dollars, and as soon as this is received, the new dollars should be made full legal tender concurrently with the Mexican and British dollars, and steps should be taken to put them into circulation. The first supply of new dollars might be obtained . . . . by remitting to one of the Indian mints a portion of the coin reserve of the currency commissioners to be melted down and converted into the new Straits dollars, and this process might be continued until practically the whole of the coin reserve is converted into new dollars. . . .

Simultaneously with the arrival of the first supply of the new dollars and with the making of them legal tender, the import of Mexican and British dollars should be temporarily prohibited and the export of the new dollars should also be prohibited. As there is ordinarily a large import of Mexican and British dollars into the Straits, and subsequent export of them, we think it likely that when their import is prohibited there would be a tendency toward a considerable drain of these coins from the Straits Settlements, and if the new dollars are freely supplied, the change of currency might be completed without any great delay.

When the currency is so largely composed of the new dollars as to justify the measure, the Mexican and British dollars should be finally

[1] Report of the Straits Settlements Currency Committee, May, 1903, pp. 12 and 13.

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demonetized and the Straits Settlements would then be in the position in which India was when the change of standard was undertaken in that country, with, however, the very important advantage that there would not be an enormous proportion of the new coins either hoarded or circulating in foreign countries, which might, by being thrown into circulation, indefinitely delay the establishment of the gold standard.

After the Straits Settlements had arrived at this stage, the procedure might be exactly the same as it was in the case of India, *i.e.*, after sufficient Straits dollars had been coined to meet the requirements of business in the colony and the adjoining States, the coinage of dollars would cease until the exchange value of the dollar had reached whatever value in relation to the sovereign might be decided on by the government as the future value of the Straits dollar. After this stage is reached the Straits Government would issue the new dollars in exchange for gold, and at the fixed rate.

When the gold standard is established, it would not be indispensable that any gold coins should be made legal tender in the colony and the States. But the government should be prepared not only to give in exchange for a sovereign such a number of dollars as are hereafter declared equivalent to a sovereign, but also to give sovereigns in exchange for dollars at the same rate so long as gold is available, or to give bills on the Crown agents in London based on the fixed rate of exchange.

The committee expressed the opinion that it was "desirable that the standard of value and the currency of the Straits Settlements and the Federated Malay States should continue to be identical, and they hold the same opinion with regard to Johore."

The above recommendations of the currency committee were first published in Singapore on May 7, 1903, and were adopted *in toto* by the legislative council on May 29, and accordingly represent the law under which the new currency is established.

On September 25, 1903, an ordinance was passed authorizing the governor in council, subject to the approval of the secretary of state, to issue an order prohibiting the importing, circulating or holding in one's possession of certain coins to be specified in the order, after a date fixed therein, under penalty of heavy fines and the forfeiture of the coins thus illegally used or held.

As soon as it became evident that the importation of Mexican and British dollars into the Straits Settlements was likely to be

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prohibited when the new Straits dollars began to arrive, sterling exchange rose in the Straits as compared with neighboring countries, and a strong tide of Mexican and British dollars began to flow from Hongkong, the Philippines, China, French Indo-China and other neighboring countries toward Singapore, in anticipation of the future prohibition of their importation and their redemption in the new dollars. The money market was so flooded with this money that considerable currency exportations were soon found profitable.

The new dollars began to arrive early in October, and the governor, pursuant to the authority given him in the ordinance of September 25, 1903, immediately upon the arrival of the first shipment of the new coins, issued an order prohibiting the exportation from the colony of the Straits Settlements dollar and the further importation into the colony of Mexican or British dollars. The new dollars are being coined at the Bombay mint, and since October 1 nearly every boat coming to Singapore from Colombo is said to have brought several hundred thousand of the new dollars. The money received is being placed in circulation through the instrumentality of the treasury and the banks.

It is yet too early to pass judgment upon the success of the scheme adopted, and prophecies with reference to currency problems in the Orient are exceedingly dangerous. Moreover the details of the methods to be adopted for maintaining the sterling parity when it once has been attained and for adjusting the currency supply to the demands of trade have not yet been made public. So far the Straits have simply begun to substitute one silver currency for another, and the colony will continue to be on a silver standard until the old local currency has been displaced by the new, and the new currency has been raised to a fixed sterling equivalent yet to be decided upon. This process anywhere would be a slow one; in the Orient, where custom and prejudice are such dominant factors in all matters pertaining to the currency, it is likely to be especially slow.

The promptness and ease with which the change will be effected depend very largely upon the future course of silver and the sterling par of exchange which the Straits government finally adopts. It is generally believed that the par of exchange fixed

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will be two shillings. This is the rate that has been most persistently urged, a rate which would not materially alter the existing unit of account, or the more recently contracted long-time obligations, a rate in harmony with the units of neighboring countries, as for example, the Japanese yen, the Philippine peso, the French piastre, the Mexican and British dollars, and a rate easily assimilated to the currency of the home country. If silver should continue anywhere near its present price the silver content of the new dollar, moreover, would, at a two-shilling rate, be sufficiently large to offer little inducement to counterfeiting, and on the other hand, sufficiently below the nominal value of the dollar to offer little probability of its being melted down for bullion.

If silver falls so that it shall become necessary to raise considerably the value of the new dollars in order to bring them to the sterling par decided upon, the time required to effect the change will be a long one, and the monetary stringency, which will be a condition *sine qua non* to raising their value, will be severe; while the additional burden placed upon that part of the debtor class who have long-time obligations contracted at times when the monetary unit was considerably below the par of exchange fixed upon, and payable in the new and higher priced dollar, will be a heavy one, except in so far as it may be lightened by special legislation or by increased incomes (largely temporary) arising from the adoption of a monetary unit of account of a higher value. In these respects a low price of silver is likely to entail upon the Straits Settlements a repetition of the unfortunate experiences which India passed through during the period from 1893 to 1898.

During the time that the value of the new dollar is being raised above the value of the Mexican and British dollars, at a parity with which it shall have been permitted for a considerable time to circulate, great care will be necessary to prevent the illicit importation of these coins, which would tend to displace the new dollars and to prevent the realization of the currency scarcity necessary to raise the new dollar to the sterling par adopted. To prevent this contingency it seems quite probable, that if the Mexican and British dollars are materially cheaper in the out-

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side market than the sterling value fixed upon for the new Straits dollar, it will be found necessary to put into effect the measures penalizing the circulation of the old currency, authorized in the ordinance of September 25, 1903.

If on the other hand the price of silver rises so that the market value of the old dollars is practically equal to the sterling value given to the new dollar, and if their value remains at this high point long enough to create a prejudice in favor of the new dollar and to establish in the business community the habit of using it, a subsequent fall in the value of the old money would leave the new dollar in possession of the field, and offer little inducement toward the illicit importation of the Mexican or British dollars. Under this contingency the penalizing of the circulation of the old money would probably be unnecessary.

E. W. KEMMERER.

MANILA, P. I., March 1, 1904.

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TRIAL BY JURY IN GERMANY.

THE organization of the courts in Germany and the rules of procedure, both civil and criminal, are regulated by imperial law.[1] The ordinary courts are four in number and, taken in descending order, are the following: the *Reichsgericht*, the *Oberlandesgerichte*, the *Landgerichte* and the *Amtsgerichte*. There is but one *Reichsgericht*. Its seat is at Leipzig. With respect to the remaining courts, their number increases with the decrease in extent of their local jurisdiction, the most numerous being of course the *Amtsgerichte*. All the ordinary courts, with the exception of the *Amtsgerichte*, are collegiate, and all, without exception, have both civil and criminal jurisdiction.

Trial by jury is known, according to German law, only in criminal procedure and, further, is limited to cases which lie within the competence of a single court. This court is the *Schwurgericht*. It is not specifically mentioned in the law among the ordinary courts of Germany. At the same time it does not belong to what are known as "special courts." The law of judicial organization (*Gerichtsverfassungsgesetz*) provides for the erection of *Schwurgerichte* "*bei den Landgerichten*," *i.e.* at the seat of, and out of members of, the *Landgerichte*. These *Schwurgerichte* are not permanent courts. They are constituted periodically, their session, when not expressly fixed by state law, being determined by the state judicial administration (*Landesjustizverwaltung*). Strictly speaking, they belong to the *Landgerichte*. They are, in a way, secondary organs through which a part of the activity of the *Landgerichte* is manifested.

The *Schwurgericht* is composed of three learned judges and twelve laymen called to serve as jurors. The judges are appointed by the president of the *Oberlandesgericht* in whose jurisdiction the

[1] Gerichtsverfassungsgesetz of January 27, 1877, with amendments of May 17, 1898; Civilprozessordnung of January 30, 1877, with amendments of May 17, 1898; and Strafprozessordnung of February, 1877. In the notes these laws will be referred to as GVG, CPO and StPO respectively. For good discussions of the German judicial system, see Laband, Deutsches Staatsrecht, 1901, vol. iii, pp. 335 *et seq.*, and Garner, "The German Judiciary," POLITICAL SCIENCE QUARTERLY, vol. xvii, p. 490, and vol. xviii, p. 512.

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court is erected. One of these judges, chosen to serve as president during the single session, is selected from the associate justices of the *Oberlandesgericht*, or from the members of the *Landgericht*. The other two judges are always taken from the *Landgericht*. The mode of selecting the jurors is set forth below. The jurisdiction of the *Schwurgericht* is limited to criminal cases and extends over all criminal cases for which the other courts are not competent. Broadly speaking, all the more serious crimes, with the exception of treason, are tried before the *Schwurgericht* and are therefore tried by jury.

I.

"The office of juror is an honorary office. It may be held only by a German." [1] The juror, therefore, receives no pay for his services. He may, however, without violating the law, accept such a refunding of his travelling expenses as state legislation may provide for. Before the law of judicial organization went into effect, the rule obtained, in several of the German states, that no man could serve as juror unless he were a subject of that particular state. The imperial law has removed this limitation. Any man possessed of citizenship in the Empire, no matter to which state he may belong, is competent for jury service, provided no question other than that of citizenship arises. The participation of a non-German as juror would render the proceeding void.[2]

In determining who may serve as juror, the law approaches the subject from the negative side, designating in the first place those who are incompetent[3]; in the second place, those who, though legally competent, should not be summoned; and in the third place, those who, though competent and summoned, may refuse the summons.

Under the first category may be grouped three classes of persons: (1) persons who have forfeited the right to serve, as the result of a criminal judgment; (2) persons against whom trial has

[1] GVG, sec. 81.

[2] The definition of a "German" is fixed by the imperial law of June 1, 1870. See, on effect of participation of a "Nichtdeutscher," Löwe, Komm. z. StPO, p. 52, note 3 to GVG, sec. 31.

[3] By "competent" is meant legal competence merely. Mental or physical capacity is not drawn into question in this first category.

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begun on a criminal charge which may lead to a divestment of civic honors (*Ehrenrechte*), or of the right to be invested with public office[1]; and (3) persons who, as the effect of a judicial decree or order, are restricted in the disposition of their property.[2] These persons alone are incompetent. The category is thus narrowly limited, because the law would reduce to a minimum the number of cases in which the validity of a judgment may be contested on the ground of the participation of an incompetent juror.[3]

To the second category — *viz.* those who should not be summoned — belong two groups of persons, each group comprising several classes. The first group[4] embraces: (1) persons who, at the time the jury list is made up, have not reached the full age of thirty years; (2) persons who, at the time the list is made up, have not resided two full years in the commune (*Gemeinde*); (3) persons who are receiving, or who have received in the three years immediately preceding the making up of the list, support from public charities for themselves or for their families; (4) persons who, by reason of mental or bodily infirmity, are incapacitated for service; and, finally, (5) servants (*Dienstboten*).[5] The persons composing this group are to be eliminated in the interest of the administration of justice. They are persons who, by reason of their youth, dependent position or personal characteristics, cannot be assumed to possess the qualifications requisite for the proper performance of the functions of juror.

The second group in this category is composed of nine classes of persons, whose exemption is not in the interests of the administration of justice but in the interests of the public service, state or imperial.[6] These classes comprise the following persons: (1) ministers of state; (2) members of the senates of the free cities; (3) imperial officials who at any time may be retired from active

[1] Disability begins only with the actual opening of the trial, *i.e.* at the moment when the man is "put in jeopardy." A preliminary examination or the mere fact of arrest does not effect such incompetence. See GVG, sec. 32, and Struckman und Koch, Komm. z. CPO, notes to GVG, sec. 32.

[2] This refers particularly to spendthrifts and bankrupts.

[3] See Motiven, GVG, pp. 43, 44. [4] GVG, secs. 33 and 85, cl. 2.

[5] No attempt has been made in the law to define this term "servant." The definition must be sought in the civil law and in custom. Such definition may, therefore, vary in different parts of the Empire. See Motiven, GVG, pp. 44, 45.

[6] GVG, sec. 34.

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service; (4) state officials who at any time may, by state legislation, be retired from active service; (5) judicial officials and state prosecuting attorneys; (6) ministerial officers (*Vollstreckungsbeamte*) of the courts or of the police; (7) persons employed in a public capacity in the service of religion; (8) teachers in the public schools; (9) military persons belonging to the active army or active marine. In addition to the persons above specified, the several states may designate, by law, certain higher administrative officials who shall not be summoned. Imperial officials may be excluded from jury service by state legislation.[1] Attorneys are not numbered among those who shall not be summoned to jury duty, nor are notaries, unless by the provision of a state law they are classed among the ministerial officers of the court.[2]

Under the third category, *viz.* those who, though competent and summoned, may refuse to serve, fall the following six classes of persons[3]; (1) members of a German legislative assembly; (2) persons who have already served as jurors during the year; (3) physicians[4]: (4) apothecaries who have no assistants; (5) persons who, at the time the jury list is made up, have completed the sixty-fifth year of their life, or expect to complete it during the course of the year; and (6) persons who present credible testimony to the effect that they are unable to bear the expense connected with jury service.

To sum up: the law, so far as eligibility and liability to jury duty are concerned, distinguishes three general groups of persons: (1) those who can not serve; (2) those who should not serve; and (3) those who need not serve. The participation of one of the first group renders the proceedings void. A non-observance of the law with respect to the second and third groups does not, in itself, involve such a result.

II.

While the empanelling of the jury is the first step in the actual trial of a specific case before the *Schwurgericht*, it is the last step in a rather complicated process of selection. This process is intimately bound up with the method of constituting certain mixed

[1] See GVG, Protokoll, p. 384.
[2] See Staudinger in the *Deutsche Notariat-Zeitung* for 1880, p. 195.
[3] GVG, sec. 35. [4] Including dentists and veterinaries.

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courts which I have not yet mentioned and which are known in the German judicial system as *Schöffengerichte*. It becomes necessary, therefore, to deal somewhat at length with these mixed courts.

The *Schöffengerichte* are courts which stand in much the same relation to the *Amtsgerichte* as that in which the *Schwurgerichte* stand to the *Landgerichte*. The *Schöffengericht* is made up of the judge of the *Amtsgericht*, as president, and two lay members, known as *Schöffen*, from whom the court derives its name. This court is competent to try minor offenses. No *Schöffe* serves more than five days in the year. A considerable number of men is therefore required during the year for the performance of the duties connected with this office. What has been said above with reference to eligibility and liability to jury duty applies also to the office of *Schöffe*. Inasmuch as the list of persons who are eligible to service as *Schöffen* is made the basis of the list from which the jury is finally selected, it is necessary to explain the process by which the *Schöffen* list is constructed.

The presiding official in each commune, or of such political corporation as corresponds to the commune in the administrative organization of the state, must each year prepare a list of those persons in the commune who may be summoned to serve as *Schöffen*, excluding of course those who are incompetent and those who should not be summoned, but not excluding those who may be entitled to refuse service. This list is exhibited for public inspection for one week, the date of such exhibition having been previously published. During this period of inspection, protests asserting the incorrectness or incompleteness of the list may be made in writing, or they may be made orally and recorded. Any person has a right to enter protest, whether he be the party affected or not.[1] The presiding official in the commune then sends the list, together with the protests and such remarks as the circumstances seem to demand, to the judge of the *Amtsgericht* in the district to which the commune belongs.[2]

[1] Should some one other than the party affected make the protest, as a rule a hearing of the party himself is required.

[2] Should the existence of further defects in the list be brought, no matter in what way, to the knowledge of the presiding official of the commune, he must notify the judge of the *Amtsgericht*, who shall make the necessary corrections.

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At the seat of the *Amtsgericht* there meets yearly a committee composed of the judge of the *Amtsgericht*, as president, an administrative official of the state designated by the state government, and seven "trustworthy men" (*Vertrauensmänner*). These *Vertrauensmänner* are elected by the representative body of the district, as provided for by state law, and are to be chosen from the inhabitants of the judicial district of the *Amtsgericht*. Having satisfied himself that the requirements of the law with respect to the public inspection of the commune lists and the opportunity for protests have been properly met, the judge of the *Amtsgericht* combines all the commune lists handed in to him and lays the grand list thus formed before the committee. This committee — the president, the administrative official and at least three *Vertrauensmänner* being present — passes upon the protests made against the commune lists, and its decision, from which there is no appeal, is made a matter of record. From the "primary list," thus corrected, the committee chooses the requisite number of persons to serve as *Schöffen*. Inasmuch as the same qualifications are required for eligibility to jury duty and to duty as *Schöffe*, this primary list serves the double purpose of providing the names of those persons who may be summoned for either function.[1]

Unlike the *Schöffen*, the jurors may not be chosen immediately by the committee. They are selected by a process which must be more fully outlined. Every year the number of jurors required for each *Schwurgericht*, and also the distribution of this number among the several *Amtsgericht* districts, are determined by the state administration of justice (*Landesjustizverwaltung*).[2] Out of the primary list from which it chooses the *Schöffen* for the ensuing year, the committee, at the same time, constructs a list of persons, whom it proposes for jury duty. This list of proposed jurors, which is called the "*Vorschlagsliste*," must contain three times the number of names assigned to the *Amtsgericht* district by the state administration of justice. This *Vorschlagsliste*, together with the protests relating to the persons named therein,[3] is sent to

[1] The same person, however, may not be summoned both as juror and as *Schöffe* during the same year.

[2] The number will depend on the number of sessions to be held by each *Schwurgericht* during the year.

[3] It is to be observed that the decision of the committee with respect to protests is final in connection with the choice of *Schöffen* only.

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the president of the *Landgericht*. This official now calls a session of the *Landgericht*, in which five members of the court, including the president himself and four judges named by him, take part. The sitting is not public, nor is the presence of the clerk of the court necessary.[1] These five members of the *Landgericht* render a final decision with respect to the protests transmitted to them by the committee, and choose from the *Vorschlagsliste*, by absolute majority vote, two lists of jurors: (1) a list of chief jurors (*Hauptgeschworenen*), and (2) a list of substitute jurors (*Hülfsgeschworenen*). These two lists, known as "year-lists," are kept separate and distinct. The substitute jurors, whose duties will be explained below, must be chosen from among the persons living at, or in the immediate vicinity of, the place where the *Schwurgericht* has its seat.[2]

At least two weeks before the session of the *Schwurgericht* begins, in an open sitting of the *Landgericht* in which the president of the court and two members shall take part, and in the presence of the public prosecutor, thirty chief jurors are selected by lot from the year-list of *Hauptgeschworenen*.[3] Jurors who have already served in an earlier session of the court during the same year are not, as a rule, subjected to the drawing; their names are again placed in the urn only upon their own motion. The list of thirty jurors is known as the "verdict list" (*Spruchliste*). It is put into the hands of the judge who has been appointed president of the *Schwurgericht* for the coming session.

The jurors drawn in the *Spruchliste* are summoned, by order of the president appointed for that session of the *Schwurgericht*, to appear at the opening sitting of the court; and they are informed, in the summons, of the legal consequences of a failure to respond. The summons is issued by and in the name of the public prosecutor. Jurors who do not appear at the proper time or who fail to obey the summons, without good and sufficient excuse,

[1] This fraction of the *Landgericht* is not to be confused with the *Strafkammer* or criminal chamber of that court.

[2] This provision is one of mere utility. Persons living in the vicinity of the court can be summoned with less delay, and can serve with less personal inconvenience, than could persons living at some distance from the seat of the court.

[3] The lots are drawn by the president of the court, and a record is kept by the clerk.

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may be fined in any sum from five to one thousand marks, plus the costs.[1]

The various steps in the process of choosing jurors for any session of the *Schwurgericht* may be indicated, then, by the four lists which are formed: (1) the primary list of all persons who are eligible to serve; (2) the *Vorschlagsliste* of names proposed as jurors for the ensuing year; (3) the year-list of *Hauptgeschworenen* and the year-list of *Hülfsgeschworenen;* and (4) the *Spruchliste* of thirty chief jurors, from which the jury of twelve men is to be drawn for the trial of a specific case.

III.

The jurors named in the *Spruchliste* having responded to the summons, the president of the *Schwurgericht* makes known to them the name of the accused person and informs them of the nature of the act of which said person is accused. He then states the grounds upon which a juror is to be excluded from participation in a particular trial, and calls upon each juror to declare any circumstances which would exclude him from service in the cause about to be tried.[2] The omission of such a request on the part of the president will not support a demand for revision of sentence, unless it can be shown that a juror who should have been excluded actually took part in the trial.[3] The president then calls the roll, and the names of the jurors present (leaving out, of course, any who should be excluded) are written upon tickets and deposited by the president himself, or by the clerk, in an urn. The law expressly declares[4] that in no circumstances can the court proceed to the selection of a jury, unless at least twenty-four jurors are present who are qualified to sit in the case. This

[1] GVG, secs. 96, 56.

[2] It is assumed that no juror is present against whom a charge of incompetence would properly lie. That question has already been disposed of in constructing the year-list. The grounds of exclusion referred to in the text do not go to the competence of the person to serve as juror in any case, but only to the appropriateness of his serving in this particular case. Grounds of exclusion, *e.g.*, would exist where a juror had an interest, direct or remote, in the case, or where he was related to one of the parties, *etc.* See StPO, secs. 22, 32 and 317, cl. 3.

[3] See StPO, sec. 377, nos. 1, 2; Löwe, pp. 817–819.

[4] StPO, sec. 280, cl. 1.

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rule cannot be waived, even by agreement of the parties to proceed with a less number of names in the urn. Should it be found, upon counting the tickets, that there are not twenty-four jurors present and qualified, a sufficient number of names is drawn from the year-list of substitute jurors (*Hülfsgeschworenen*) to fill out the number to thirty.[1] The drawing is by lot and must take place in open court.[2]

If twenty-four or more names be found in the urn, the president states the exact number and informs the public prosecutor and the defendant of the number of challenges to which each is entitled. There may be as many challenges as the names in the urn exceed twelve in number. This rule, however, admits of an exception. For, in addition to the twelve who constitute the regular jury, one or more persons may be drawn by lot at the same time to act as supplementary jurors. These men sit in the case, take part in the trial, and have the same right in proposing motions as the other jurors. Under ordinary circumstances they are not allowed to retire with the jury for deliberation, and they do not participate in finding the verdict; but should one of the regular jurors be suddenly incapacitated for service, by reason of illness or from some other cause, his place is taken by a supplementary juror, and the trial (the necessity for a new one being thus avoided) proceeds without delay. It need hardly be said that, in such a contingency, the supplementary juror becomes a regular juror and participates both in the deliberation and in the finding of a verdict. When supplementary jurors are drawn, the number of challenges is reduced by as many as there are supplementary jurors chosen.[3]

[1] That is, at least seven *Hülfsgeschworenen* must always be drawn.

[2] Most of the German jurists are agreed that, if it appears that the requisite number of jurors will not be present on the opening day of the session, a number of substitute jurors may be drawn before that day, provided the drawing takes place in the court. This would save a subsequent delay. See Löwe, note 7*a* to StPO, sec. 280, cl. 2; von Schwarze, Komm. StPO, p. 444; Dalcke, Komm. p. 190; H. Meyer, in Holtzendorff's Handbuch des dt. Strafprozessrechts, vol. ii, p. 121; Keller, Komm. p. 359; Stenglein, Komm. p. 486, note 3; Isenbart, Komm. note 13 to StPO, sec. 280. For contrary view, Puchelt, Komm. p. 454.

[3] For example, if one supplementary juror is to be drawn, there will be as many challenges allowed as the number of names in the urn exceeds thirteen. Each additional supplementary juror reduces the number of challenges by one.

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The challenges are divided equally between the prosecution and the defense.[1] If there be an odd challenge remaining, it goes to the defense. Where there are several defendants, and no agreement can be reached among them as to the distribution of the challenges, the court divides the challenges due to the defense equally between the defendants, assigning the odd challenge, should one exist, by lot.

The names are drawn from the urn by the president of the court, in the presence of the defendant, of the prosecutor and of the clerk of the court. The name is at once read aloud, whereupon the prosecutor must declare, by calling out the word "*angenommen*" or "*abgelehnt*," his acceptance or rejection of the juror. Following the declaration of the prosecutor comes the declaration of the defendant. By the observance of this order the defendant is given an advantage; for, should the prosecutor reject a name which chanced also to be unacceptable to the defendant, the challenge of the defense is saved for subsequent use. The challenges are all peremptory. Causes for rejection may not be given. When a declaration is once made, it cannot be withdrawn if another name has been already drawn or if the drawing is ended. The drawing is ended when twelve men (thirteen, fourteen, *etc.*, if supplementary jurors are chosen[2]) have been accepted, or when the number of challenges has been exhausted.

The jury, including the supplementary jurors, is sworn, not as a body but individually, by the president in open court and in the presence of the accused. With the seating of the jurors, which takes place in the order in which they have been accepted, the court is ready to proceed with the trial.

An attempt to follow the procedure through its various stages would transgress the limits set for the present paper. A single word, however, must be inserted. When a witness is under ex-

[1] The number of challenges due the prosecutor is wholly independent of the number of defendants. The division is between the prosecution and the defense, not between the persons concerned. Where the word "prosecutor" is used in this paper, the public prosecutor (*Staatsanwalt*) is of course meant.

[2] Whether, and in what number, supplementary jurors shall be chosen lies wholly within the discretion of the court. The parties have no right to be heard in the matter, although it involves a material limitation of the right of challenge. See Löwe, notes 6 and 7 to GVG, sec. 194.

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amination, any juror may request the president of the court to have a certain question or certain questions put to the witness. Such question must be put and must be answered, unless in the opinion of the president it be "irrelevant, incompetent or immaterial."

IV.

The case goes to the jury in the form of a list of questions which the jury must answer in bringing in its verdict. These questions are prepared by the president, and must "exhaust the indictment." That is to say, in framing the questions no material element of the crime with which the defendant is charged should be left out; for since the jury, in rendering its verdict, is confined to answering the questions submitted to it, a failure to incorporate in these questions certain essential elements might easily result in at least a partial acquittal. The decision of the question of guilt (*Schuldfrage*) in all its phases belongs to the jury alone. The exercise of the judicial power in such a way as to affect even indirectly, that is, by a manipulation of the questions, this function of the jury, would be regarded as an unwarrantable interference in the prerogatives of that body. It would amount to a participation of the court in finding the verdict, a practice which the law of criminal procedure excludes on principle in trials before the *Schwurgericht*. For this reason the law requires that the questions submitted to the jury shall cover all the material points in the accusation, not alone that the full measure of guilt may be reached, but that the determination of the existence and of the degree of such guilt may be made by the jury rather than by the court. A further safeguard is found in the right granted to the prosecutor, to the defendant and to each juror to move an amendment to the questions, either by way of correction or addition.[1] The questions are to be so worded that they may be answered by "yes" or "no."

Three kinds of questions are mentioned in the law[2]: principal

[1] A motion to include contingent or subsidiary questions can be denied only on the ground that the proposed question is not legally permissible, or is in content of no legal significance and can have no influence on the judgment. It should be remarked that a juror cannot demand the putting of a question relating to the existence of mitigating circumstances. [2] StPO, secs. 293, 294, 295.

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questions (*Hauptfragen*), auxiliary questions (*Hülfsfragen*) and subsidiary questions (*Nebenfragen*). The *Hauptfrage* must go directly to the question of guilt. It begins always with the words: "Is the defendant N. N. guilty . . . ?" and it must define the crime in the exact phraseology of the criminal law, as well as specify the elements which serve to identify the act, *e.g.* time, place and the person accused. The evidence, however, may develop circumstances and conditions which make it doubtful whether the degree of guilt is that asserted by the prosecutor. This makes it necessary to append to the *Hauptfrage* auxiliary questions, designed to fix the exact nature of the crime or, as the Germans express it, the "*Schuldform.*"[1] These contingent questions are to be answered, of course, only in case the *Hauptfrage* is denied. Should it appear, further, from the evidence that circumstances exist which may affect the penalty, increasing or diminishing it, or which may, in fact, annul the penality (*Strafbarkeit*) of the act altogether, subsidiary questions so framed as directly to develop these points must be appended to the principal or auxiliary question to which they are related. Each question, of whatever sort, must relate to one defendant only and to but one criminal act, even if several identical acts are charged. A failure to observe this rule will render the judgment void. All the questions are drafted by the president of the court and must be read aloud in open court. Should a motion to that effect be made by the prosecutor, by the defendant or by one of the jurors, the questions must be reduced to writing and a copy furnished to the prosecutor, the defense and the jury.[2] On request of these parties a brief recess may be taken for scanning the questions.

[1] If, *e.g.*, the defendant is accused of murder, and it appears from the evidence that he may have been guilty of manslaughter only, then an auxiliary question would be submitted to the jury: "If N. N. is not guilty of murder, is he guilty of manslaughter?" The decisions of the courts are not in accord as to the permissibility of such questions as the above. The latest decisions favor it, however, on the ground that in submitting such an auxiliary question no new and different act of the accused is brought under examination. Both *Hauptfrage* and *Nebenfrage* deal with an alleged killing. The difference is in the element of premeditation.

[2] A refusal on the part of the president will not render the proceeding void. The fact that copies of the questions are furnished to the parties and to the jury does not release the president from the obligation to read the questions aloud in open court.

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When the questions have been definitely fixed, the arguments of the attorneys for either side are heard. These arguments must be confined strictly to the matters developed in the questions. Then follows the instruction (*Belehrung*) of the jury by the president of the court. In many of the German states it had been the rule, imitating the provision of the French law,[1] that the president of the court should prepare the jurors for a decision of the matter before them by a comprehensive presentation of the results of the evidence. The German code of criminal procedure, however, has preferred to substitute a simple final word of instruction regarding the law. In this *Belehrung* all discussion with respect to the value of the testimony presented at the trial, all reference to the weight which should be given to any evidence brought forward, is to be rigidly excluded. In the main the learned judge must confine himself to explaining the application of the criminal law involved in the case, to a statement of the meaning and bearing of the questions, and to such an exposition of the rules of criminal procedure as may seem by the circumstances to be required. The jury may also be reminded of its duties and the scope of its powers. In general, the theory on which the instruction is based may be summed up in the words of the motives to the code of criminal procedure, page 202: "The instruction should fix in the mind of the jury the particular status (*Lage*) of the matter which is to be decided." The instruction cannot be made the subject of argument by either party. What the attorneys may have said in addressing the jury is taken into account by the president only in so far as may be necessary for the correction of a false exposition of the law.[2]

Instruction of the jury is obligatory. That is to say, the president of the court has no option in the matter: he must instruct. It may happen, in simple cases, that no material exists for such instruction. In such a contingency, the president must formally state that fact. It is not permissible to substitute instruction given in an earlier proceeding. Should one of the legal points touched upon in the instruction be a disputed point, *i.e.* should jurists

[1] Code d'instruction criminelle, art. 336.

[2] A statement contrary to fact or a wrong quotation of the testimony by one of the attorneys is to be corrected, if at all, at the close of the argument.

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and decisions differ on the question, the president must call attention to the fact and lay before the jury the different views held. He is also considered bound to give his own personal opinion on the point at issue. He may not, however, confine himself to the utterances of his own views.[1] Should a diversity of opinion exist in the court, the president is not to state this fact, but is simply to say that the point of law is not free from dispute.[2]

The instruction is not made a part of the record, though at the time the code of criminal procedure was framed it was attempted to incorporate such a provision in the law. Neither party has a right to move the recording of any part of the instruction. It follows, of course, from the fact that there is no documentary evidence to fix the content of the charge to the jury, that the judgment cannot be contested on the ground of anything contained therein nor on the ground of any omission. That, in his instruction, the president may have exceeded his authority or given a false interpretation of the law will not, therefore, support a plea for revision. Moreover, the jury is in no wise bound by the instruction of the presiding judge. On the contrary, according to the theory of the code of criminal procedure, the jury is called to take an independent part in considering the criminal law in the case.[3] It is the function of the jury to decide not only whether the accused has been proven guilty as charged, and whether or not mitigating circumstances exist, but also whether the act falls within the definition of a crime under the law. As Löwe puts it, the jury must decide "über die Subsumtion der bewiesenen Tatsachen unter das Strafgesetz; sie entscheiden darüber: ob der Angeklagte *vor dem Gesetze* schuldig ist."[4]

[1] Compare here H. Meyer, in Holtzendorff, vol. ii, p. 187; Stenglein, note 1 to StPO, sec. 300; Dalcke, Fragestellung, p. 114; von Kries, p. 620. The writer follows the view of Löwe.

[2] The jurists are not agreed as to whether the president is not bound, should he find the other two judges against him, to give the opinion of the court, being then at liberty to add his own opinion. At any rate, it seems settled that he is under no obligation to ascertain whether a difference does exist in the bosom of the court.

[3] See H. Meyer in Holtzendorff, vol. ii, p. 188; Stenglein, note 3 to StPO, sec. 300; von Kries, p. 621; also Dalcke, Fragestellung, p. 116.

[4] In determining the powers of the jury, the StPO does not draw a sharp distinction between the decision of the question of fact and the decision of the question of law.

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V.

Having completed his instruction, the president signs the questions with his own hand and delivers them to the jury. The defendant is removed from the court-room and the jury retires for deliberation.[1] All persons, including the supplementary jurors, are excluded from the jury-room. In cases of necessity an officer of the court may be admitted, but under no circumstances may the president enter the chamber. With respect to the admission of books, papers and other articles connected with the case, great diversity of opinion prevails. The law provides that "articles, which have been laid before the jury for their inspection during the trial, may be delivered to them in the jury-room."[2] Neither the decisions of the courts nor the views of commentators agree as to the content and extent of this rule. Practice also varies. In the debate over the framing of the law, it was contended without contradiction that it was permissible for the jury to send for law books, particularly for such books as the criminal code and the law of criminal procedure. The *Reichsgericht* has held that the delivery of commentaries to the jury is not to be allowed.[3] In any case the jury has no claim either to the inspection of articles or to the consultation of books of law. The matter is wholly in the discretion of the court.

On reaching the jury-room, the jurors proceed to the election of their foreman. The law stipulates that the vote shall be by written ballot. The object of this provision is to prevent what takes place frequently in the organization of assemblies, *viz.* the election of a man merely because he chances to be nominated or proposed for it. A simple majority is sufficient to elect. In case of a tie, the vote of the oldest juror decides.

The code of criminal procedure makes no attempt to regulate the method of deliberation or of voting in the jury-room. The law of judicial organization, however, contains two provisions:

[1] The retirement of the jury is compulsory. The jurors may not, as in England and America, "render a verdict without leaving their seats."

[2] StPO, sec. 302.

[3] Decision of Reichsgericht, II Strafsenat, April 20, 1886, reported in Rechtsprechung des deutschen Reichsgerichts in Strafsachen, vol. viii, p. 301. See also Reichsgericht I, November 29, 1886, *ibid.*, vol. viii, p. 721.

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(1) that the order of voting shall follow that in which the jurors were drawn; and (2) that each juror must vote on every question. The foreman votes last. No juror may refuse to declare himself, even though the votes cast before his turn to vote is reached may already show a majority sufficient to decide. No record is kept, either with respect to the election of the foreman or with respect to the deliberation and vote of the jury.

It has been previously remarked that the questions are to be so framed that they may be answered by "yes" or "no." While the law, in conformity to this provision, declares that the jurors have to answer the proposed questions with "yes" or "no," a clause is inserted to the effect that the jurors "have the right to answer a question partly in the affirmative and partly in the negative."[1] The answer must leave no doubt as to which part of the question is affirmed and which denied. It is very evident that here is an opportunity for no end of confusion, especially when the questions involve relationships or deal with circumstances and conditions more or less intricate. Should doubt arise as to which part of a question is actually affirmed and which part denied, such doubt is not to be resolved by judicial interpretation. The jury must retire to deliberate again and to remedy the defect. No special formula is laid down for these cases of partial affirmation and partial denial. The Prussian law of May 3, 1852, article 91, prescribes the use of the words: "Yes, but it is not proven that . . ." This formula is generally recommended by German jurists.

The code of criminal procedure does not make it clear whether the jurors, in rendering their verdict, have not the right to go beyond the mere affirmation or negation of the questions. When this code was being debated in committee (*Justizkommission*) of the Reichstag, it was proposed that a clause be inserted as follows:

> The jurors may append to their answers to the questions submitted to them special additions in the form of a more detailed explanation of those answers. The court, after hearing the public prosecutor, is to decide what importance is to be assigned to these additions and is to take them into account accordingly in pronouncing judgment.

[1] StPO, sec. 305.

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The proposition was not adopted. Its rejection can hardly be justified from the standpoint of the general theory underlying the code of criminal procedure. This law assigns to the jury the decision of the question of guilt in its entire content. To limit the jurors, in rendering their verdict, to the mere content of the specific questions laid before them, to seek to withhold from them the right to examine the matter also from such points of view as have not been suggested in those questions, is therefore hardly in accordance with the fundamental principle upon which the function of the jury rests. Yet this is precisely the position into which the jurors are forced, by being compelled to confine themselves to answering the questions laid before them; and this is the cause of acquittals which the jurors neither justify nor desire.

It must not be inferred from what has just been said that, should the jury nevertheless append an explanation to the answer to a question, such an explanation may be regarded as non-existent and may be wholly ignored by the court. On the contrary, if it should appear from such an addition that the jury had misunderstood the question, the court must take cognizance of that fact, even though brought to its attention by an incorrect mode of procedure, and must send the jury back to their room for further deliberation. This whole question — whether the jurors may append explanatory clauses to their answers and what is the legal effect of such additions — is a matter of strenuous debate and disagreement.[1]

The verdict is prepared by the foreman and must be so written down, in his own hand, that the proper answer is placed beside each question. It should be noted that the questions form an integral part of the verdict. The foreman must also sign the verdict.[2] A failure on the part of the foreman to sign the verdict will send the jury back for a correction of this defect.

[1] See Löwe, notes to StPO, sec. 305; von Schwarze, p. 470 von Bomhard, p. 227; Stenglein, Komm. note 7 to StPO, sec. 305; Hellweg-Dochow, p. 326; Isenbart, note 107 to StPO, sec. 305; von Kries, p. 625; also Keller, pp. 396, 406; Thilo, p. 364; Boitus, p. 321; Dalcke, Komm. p. 211, Fragestellung, pp. 130 *et seq.*; Puchelt, p. 487; H. Meyer, in Holtzendorff, vol. ii, p. 299.

[2] The verdict may be signed as a whole. Should the foreman, however, sign one answer, he must sign each of the others also; otherwise these latter are regarded as unsigned, and the verdict will be held incomplete by the court. It will not do to sign one answer and then sign the verdict as a whole.

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The jurors have not the right, in place of rendering a verdict, to demand further evidence. Should they nevertheless make such a request, the court is at liberty to take cognizance of it and may re-open the trial. If the jurors, before the verdict has been announced to the court, feel that further instruction is necessary, a motion to that effect is made. The president recalls the jury to the court-room and imparts the desired instruction. A motion for such instruction must be transmitted to the president, if only a single juror considers it necessary. The individual juror must not be put in a position where he is compelled to vote on a matter with respect to which he believes himself incompetent to judge intelligently without further instruction.[1]

A unanimous vote is not required in finding a verdict. The law[2] prescribes that for the affirmation of the question of guilt (*Schuldfrage*), a majority of two-thirds is necessary. That is, it takes eight votes to convict. If the vote, therefore, stands seven for conviction and five for acquittal, the defendant must be declared to be acquitted. The same majority of two-thirds is required for the affirmation of a question as to the existence of circumstances increasing the penality (*Strafbarkeit*) of the offense. On the other hand, a question as to the existence of circumstances lessening, or wholly removing, the penality is regarded as affirmed when only five vote "yes."[3] A question relating to the existence of "mitigating circumstances," however, since it belongs to the domain of penalty (*Straffrage*) rather than to that of guilt (*Schuldfrage*) or penality (*Strafbarkeit*), requires, for its denial, a simple majority. That is, seven votes will suffice to deny. In case of a tie on such a question, it is considered as answered in the affirmative. In connection with every answer unfavorable to the defendant it must be stated expressly in the verdict that the question was decided by the majority required by law. The court is thus in a position to determine whether the legal provisions have been met, or whether, on the other hand, the verdict may not set forth as affirmed a question which, under the law, should be

[1] Löwe, note 1 to StPO, sec. 306; Keller, p. 397; Hellweg-Dochow, p. 327; Stenglein, note 2 to StPO, sec. 306; Bennecke, p. 608, note 10. The question is a disputed one. See, *e.g.*, von Bomhard, p. 228; Dalcke, Komm. p. 208; Fragestellung, p. 117.

[2] StPO, sec. 262, cl. 1; and 297, cl. 2.

[3] See RGer. IV, June 8, 1886; Rspr. in Strafsachen, vol. viii, p. 441.

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regarded as denied, or *vice versa*. The actual vote, *i.e.* the exact number voting for and the exact number voting against, must not be given. The verdict must state simply that the question was decided by a majority of more than seven votes, or more than six votes, as the law may require.[1]

VI.

The verdict is announced to the court[2] — the jury having returned to the court-room for that purpose — by the foreman, who must begin by reciting the formula: "Upon my honor and conscience I certify as the verdict of the jurors . . ."[3] He then reads the questions together with the answers. The verdict as read is signed by the president and by the clerk of the court[4] before it is made known to the defendant.

If the court — not the president alone — is of the opinion that the verdict does not fulfil the requirements of the law as to its form, or that it is obscure, incomplete or contradictory in substance, the president requests the jury to return to the jury-room to remedy the defect. Such an order is permissible so long as the court has not yet pronounced its judgment based on the verdict.[5] Inasmuch as the content of the questions constitutes, at the same time, the content of the verdict, it makes no difference whether the defect attaches to the answers or to the questions.[6] In the latter case, an amendment of the questions must be made.

[1] See, however, RGer. I, November 16, 1899; Entscheidungen, vol. xxxii, p. 372. An infraction of this provision would not entail nullity of the judgment.

[2] This announcement to the court is to be distinguished from the notification of the defendant. When the jury returns to the court-room for the purpose of announcing the verdict to the court, the defendant is not present.

[3] "Auf Ehreund Gewissen bezeuge ich als den Spruch der Geschworenen . . ." The omission of this formula will nullify the proceedings. RGer. IV, December 22, 1880; Rspr. in Strafsachen, vol. ii, p. 661. Different opinion held by von Kries, p. 625.

[4] StPO, sec. 308.

[5] StPO, sec. 309. The fact that the president and the clerk of the court have signed the verdict does not prevent the correction of errors therein.

[6] Thus the process of correction is set in motion if it develops that the questions have not exhausted the essential elements of the state of facts before the law (RGer. I, January 14, 1886, Entsch. vol. xii, p. 229, Rspr. vol. viii, p. 56, and RGer. IV, May 12, 1893, *Goltdammers Archiv*, vol. xli, p. 124); or that a question required by law has not been put (RGer. II, April 16, 1886, Rspr. vol. viii,

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There is no express provision in the law for the case where the verdict itself does not show a material defect, but where nevertheless an explanation is given by the jury, or by one or more of the jurors, which suggests the existence of such a defect. A declaration of this kind certainly cannot be ignored by the court. For, as Löwe well says,[1] it would be in direct conflict with the end and aim of criminal procedure — *viz.* to establish the material truth of the matter — should the court base its judgment upon a verdict which, as the jury itself points out, is founded upon a misunderstanding or does not express the true intent of the jurors. The disregarding of such a declaration would be a subordination of law to form, whereas the function of form is merely to serve in the realization of the law. Moreover, the very nature of the procedure before the *Schwurgericht* — this rendering of a decision in the form of question and answer — enhances the liability to misunderstanding. For this reason the law allows the amendment of the verdict up to the very moment when the court pronounces its judgment. That a declaration or indication by the jury, or by a single juror, that a defect exists in the verdict must receive consideration, so long as judgment has not actually been pronounced, is a doctrine fully justified by the whole tenor of the law and by the principles of criminal procedure.[2]

p. 286); or that a question which should have been put as a *Hauptfrage* is put as a *Hülfsfrage* (RGer. II, March 20, 1891, Entsch. vol. xxi, p. 405). In these cases, however, such an error is set forth as would nullify the judgment. On the general subject of the process of correcting the verdict, see Freudenstein, in *Goltdammers Archiv*, vol. xxxiii, pp. 369 *et seq.*; Dalcke, Fragestellung, pp. 139 *et seq.*; Bischoff, in *Goltdammers Archiv*, vol. xlvi pp. 1 *et seq.*

[1] Note to StPO, sec. 309. Compare also Dalcke, Fragestellung, p. 140; Bischoff, cited above, p. 5; Stenglein, notes 6, 7 to StPO, sec. 309; Isenbart, note 128 to StPO, sec. 309; von Kries, p. 625.

[2] Here belongs, in particular, the case where a juror declares that the verdict as read does not conform to the finding of the jury, or does not express it fully or accurately; or where it is declared that the verdict was not constructed in harmony with the provisions of the law with reference to the number of votes necessary. To these cases is also related the case where it appears, from the declaration of the jury or of one of the jurors, that the verdict or the vote rests on a misconception of the question, or that the jury has materially erred in its deliberation with respect to its authority and duties. See RGer. III, January 8, 1883; Entsch. vol. vii, p. 434, Rspr. vol. v, p. 19. In all these cases, a further deliberation is required in order to establish the true mind of the jury. Otherwise, however, if it appears from the declaration of the jury that the jurors merely had a wrong

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If it appears that the defect is purely formal, and the jury, sent out to remedy it, undertakes a material change in the verdict, a judgment cannot be based upon the verdict thus amended.[1] If, however, the jury is ordered by the court to retire for the correction of a defect in the matter of the verdict, the jury becomes to such a degree possessed again of the whole material content of the verdict that it may amend even the answers not affected with error.[2] In other words, the jury has absolute freedom, in the correction of a material defect, to reconsider and reconstruct the entire verdict. Even if several offenses, independent of each other, are involved, the jury is not bound by any part of its original verdict.[3] This holds where the defect consists merely in the omission of the answer to one of the questions.[4] Nor does it matter whether the amendment is in favor of the defendant or to his disadvantage; *e.g.* the jury may affirm a *Hauptfrage* or *Hülfsfrage* which it had previously denied.[5]

It is the province of the court to determine officially whether the defect in the verdict does not arise from an error in putting the questions. If it appears that there is occasion for amending or adding to these questions, then is the court not in any wise bound by the deliberation of the jury which may have taken place in the meantime. New questions, both *Hauptfragen* and *Hülfsfragen*, may be put, provided that they would have been proper when the list of questions was first fixed.[6]

If the new verdict also shows a defect such as falls within the provisions of the law already discussed, a defect either in form or matter, the same remedial process must be repeated. Should the

conception of the effect of their verdict, or that they were influenced by a wrong interpretation of a material legal principle. Such declarations are not to be considered. See RGer. I, March 3, 1896; Entsch. vol. xxviii, p. 242.

[1] See StPO, sec. 310. [2] See StPO, sec. 311; also Motiven, p. 204.

[3] See RGer. II, April 26, 1887, Rspr. vol. ix, p. 287; RGer. IV, April 27, 1888, Rspr. vol. x, p. 349, *Goltdammers Archiv*, vol. xxxvi, p. 188; RGer. IV, January 24, 1890, Entsch. vol. xx, p. 188; RGer. IV, October 10, 1893, Entsch. vol. xxiv, p. 302.

[4] RGer. IV, November 15, 1895, Entsch. vol. xxvii, p. 411.

[5] RGer. IV, January 24, 1890, Entsch. vol. xx, p. 188.

[6] RGer. III, October 13, 1880, Entsch. vol. ii, p. 361, Rspr. vol. ii, p. 332. The court may also re-open the case and hear testimony. See StPO, secs. 305, 243, cl. 3, and 245.

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jury refuse to make such correction as the court considers requisite, then, since a defective verdict cannot support a judgment, the trial is suspended and the case must be reheard before a new jury. As to whether a stubborn jury may be fined by the court, under those sections of the law, already referred to in an earlier part of this paper, touching the punishment of jurors who neglect their duties, there is a great diversity of opinion.[1]

If the court has erred in attributing a defect to the original verdict and has therefore wrongfully ordered a correction of the same, this wrongful procedure does not impair the rights, either of the defendant or of the prosecutor, arising out of the first verdict. Logically, the party injured by the action of the court has a right to contest the judgment based on the later verdict. In such a contingency, the revising judge is to determine "whether the original verdict was affected with an error requiring correction."[2] Such a determination is possible, however, only when the earlier verdict has been clearly preserved in making up the new one. Hence the law expressly provides, that "the corrected verdict shall be written in such a manner that the original verdict remains recognizable."[3] Hence the first verdict may not be amended by means of penstrokes through clauses or words to be stricken out, nor by the insertion of words or clauses to be added. All those answers to which any correction is made must be written *de novo*, with a distinct reference to that part of the original verdict which it is the aim of the jury to alter.[4]

[1] Löwe, note 10 to StPO, sec. 309, holds that the jury may be fined. This is the view also of Dalcke, Komm. p. 212, Fragestellung, p. 142; of Thilo, p. 371; of Geyer, p. 766; of Stenglein, note 10 to StPO, sec. 309, Lehrbuch, p. 333; and of von Kries, p. 631, note 1. Keller denies the applicability of secs. 96 and 56, GVG, on which the above commentators rest their opinion, but he agrees as to the necessity for a new trial; see Keller, p. 405. Against the view of Löwe may be cited also: H. Meyer in Holtzendorff, vol. ii, p. 209; Isenbart, note 128 to StPO, sec. 309, who holds that the judgment must be pronounced even on a defective verdict; Freudenstein, *op. cit.*, p. 392; Bischoff, *op. cit.*, p. 16, who holds that a judgment of acquittal must be rendered, and Puchelt, p. 495, who says that the jury must remain in the jury-room until their task is properly accomplished.

[2] Motiven, p. 204. Compare RGer. III, October 13, 1880, Entsch. vol. ii, p. 361, Rspr. vol. ii, p. 332.

[3] StPO, sec. 312.

[4] See, however, RGer. III, April 30, 1881, Entsch. vol. iv, p. 122, Rspr. vol. iii, p. 257; RGer. III, May 24, 1886, Rspr. vol. viii, p. 383; RGer. II, December 16, 1890, *Goltdammers Archiv*, vol. xxxix, p. 56; RGer. II, September 24, 1895,

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The new verdict must also be signed by the foreman of the jury.[1] When the jury has again returned to the court-room, the whole of the verdict — not merely the amended parts — must be announced to the court,[2] and the president, as well as the clerk of the court, must affix his signature, even though he may have signed the original verdict prior to the new deliberation of the jury. The defendant is now brought back into the court-room, and the verdict is made known to him by a reading of the answers to the questions, together with the declaration that they were made by the majority required by law. The reading is usually done by the clerk of the court.

If the court is unanimously of the opinion that the jury has, on the whole, erred to the disadvantage of the defendant, then the court, by decree and without giving the grounds of its decision, refers the case for a new trial before the *Schwurgericht* at its next session. In this matter the court proceeds on its own motion. Such a reference of the case is permissible up to the very pronouncing of the judgment. If several independent criminal acts or several defendants are involved in the case, then only those acts and those persons that are affected, in the view of the court, by the error of the jury are drawn into the second trial. In the new trial no juror may take part who has coöperated in rendering the earlier verdict.[3] A case once referred for a second trial before another session of the *Schwurgericht* may not be referred again. In the new trial judgment must be pronounced, even if the verdict is regarded as erroneous.[4]

BURT ESTES HOWARD.

BERLIN, June, 1904.

Goltdammers Archiv, vol. xliii, p. 381. Here it is held sufficient if, by means of the record of the trial, the first verdict and the variations of the second are distinguishable.

[1] Unless the foreman has written in the new verdict over his former signature. See RGer. III, May 24, 1886; RGer. II, December 16, 1890; RGer. II, September 24, 1895; and RGer. III, January 12, 1885.

[2] RGer. IV, November 15, 1895, *Juristische Wochenschrift*, vol. xxiv, p. 592.

[3] This does not apply to the supplementary jurors, who have taken part in the trial but not in the decision of the jury.

[4] This is the view of Löwe, note 8 to StPO, sec. 317. There seems to be no decision of the *Reichsgericht* touching this matter.

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MUNICIPAL CORRUPTION.[1]

THIS is a work of a kind that was abundant in England during the eighteenth century but is now extinct there, while it flourishes in this country. Mental growths are no exception to the general laws of growth as regards distribution of species in time and space. Dying out in one region, a species may in another region find favoring conditions and perpetuate the type. In many respects the political ideas of our own times in this country reproduce species which belong to England's past. Mr. Steffens's work belongs to the same class as Burgh's *Political Disquisitions* published in 1774, Browne's *Estimate of the Manners and Principles of the Times* published in 1757, and innumerable tracts and essays now sunk into oblivion.

Mr. Steffens says of the articles collected in his book: "They were written for a purpose, they were published serially with a purpose, and they are reprinted now together to further the same purpose, which was — and is — to sound for the civic pride of an apparently shameless citizenship." Burgh said of his work that it was "calculated to draw the timely attention of government and people to a due consideration of the necessity and the means of reforming those errors, defects and abuses; of restoring the constitution and saving the state." Mr. Steffens puts the blame for misgovernment upon the apathy of American character. He says:

> We are responsible, not our leaders, since we follow them. We let them divert our loyalty from the United States to some "party"; we let them boss the party and turn our municipal democracies into autocracies and our republican nation into a plutocracy. We cheat our government and we let our leaders loot it, and we let them bribe and wheedle our sovereignty from us. . . . We break our own laws and rob our own government, the lady at the custom house, the lyncher with his rope, and the captain of industry with his bribe and his rebate. The spirit of graft and of lawlessness is the American spirit.

In the same style Browne argued that virtue was rotting out of the English stock from the development of a sordid commercialism which was corroding all the moral elements which are the true foundations

[1] The Shame of the Cities. By Lincoln Steffens. New York, McClure, Phillips & Co., 1904. 306 pp.

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of national greatness. The thought flows in the same channels, the same ideals preside over opinion, and the resemblance extends even to details of suggestion.

All we have to do [says Mr. Steffens] is to establish a steady demand for good government. The bosses have us split up into parties. . . . If we should leave parties to the politicians, and would vote not for the party, not even for men, but for the city and state and the nation, we should rule parties and cities and states and nation.

All this goes back to the time of Addison. In the *Spectator*, Number 125, Tuesday, July 24, 1711, he recommended that honest men should

enter into an association for the support of one another against the endeavors of those whom they ought to look upon as their common enemies, whatsoever side they may belong to. Were there such an honest body of neutral forces, we should never see the worst of men in the great figures of life because they are useful to a party; nor the best unregarded because they are above practising those methods which would be grateful to their factions. We should then single every criminal out of the herd and hunt him down, however formidable and overgrown he might appear.

One difference should be noted. It relates to temperament. American self-confidence and optimism make a distinctive mark lacking in the extinct English literature of this species. Mr. Steffens ends his sermon by saying:

We Americans may have failed. We may be mercenary and selfish. Democracy with us may be impossible and corruption inevitable; but these articles, if they have proved nothing else, have demonstrated without doubt that we can stand the truth; that there is pride in the character of American citizenship; and that this pride may be a power in the land.

This is a small set-off for such tremendous defects, but the tone of sentiment is hopeful and buoyant as compared with the gloomy forebodings which Burgh expressed in his closing reflections. He said:

I see the once rich and populous cities of England in the same condition as those of Spain; whole streets lying in rubbish, and the grass peeping up between the stones in those which continue still inhabited. I see the harbors empty, the warehouses shut up, and the shopkeepers playing draughts, for want of customers. I see our noble and spacious turnpike roads covered with thistles and other weeds, and scarce to be traced

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out. I see the studious men reading the "State of Britain," the magazines, the "Political Disquisitions," and the histories of the eighteenth century, and execrating the stupidity of their fathers, who, in spite of many faithful warnings given them, sat still, and suffered their country to be ruined by a set of wretches whom they could have crushed.

Such were the opinions of English reformers on the eve of the wonderful outburst of national energy which created the British empire and brought to England wealth and prosperity beyond the imagination of the wildest dreamer. And yet the forecast was not wholly mistaken, for corruption and mismanagement lost England the American colonies and brought her to deep abasement before the evil generated its cure and the constitution was brought into accord with the needs of the state. But historians of English political development point out that the transformation was accomplished by the politicians themselves, without the adoption of the nostrums prescribed by the reformers and by the very means which the reformers denounced as the essence of corruption. The reformers sought means of administration by the people; the politicians denied them that, but unwittingly provided means of control by the people through the formation of an agency of legislative direction and management possessing plenary authority and hence complete responsibility. This went to the root of the trouble; for in retrospect it is plain enough that the systematic political corruption was the result of political confusion. The doctrine of the separation of the powers of government had obstructed the development of any such agency or organ of sovereignty, clothed with power to provide a proper division of the functions of government and to correlate the exercise of those functions. The actual embodiment of sovereignty which gradually took shape came not by deliberate intention but through the constraint of hard necessity.[1] The formation of the English parliamentary type of government may be described, in the terms of American politics, by saying that boss rule grew up inside the government until it acquired complete authority, thus bringing within reach of public opinion, through the suffrage, competent apparatus of control over the behavior of the government and creating conditions of political activity which gradually substituted the leader for the boss. The forces which sustained constitutional development did not proceed from reform agitation but from the phleg-

[1] Sir Leslie Stephen, in his Hobbes (The Macmillan Co., 1904), makes some acute remarks upon the unforeseen character of English constitutional development. See particularly pp. 180, 181, 199 and 200.

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matic common sense of the British people, more interested in results than solicitous about means and not prone to extravagant expectations from the every-day human nature which forms the stuff of politics. To take things as they are and make the best of them, to deal with situations as they arise by the means that are available, to endure what cannot be cured, to look upon the bright side and to cultivate a habit of cheerfulness — these are the traits of which sound politics are compounded and by which constitutional progress is sustained. National hypochondria is a worse evil than national corruption. Happily the American people are free from that at any rate; they are disgusted but not dismayed by the situation, and they have a deep conviction that they will eventually find ways and means of dealing with it.

Meanwhile it must be admitted that Mr. Steffens' book does not exaggerate the facts of the case. What he says about the condition of affairs in our cities is true, and much more might be said to the same purport. In this book he confines himself to municipal graft. The graft system extends to state administration also. The "organization" judge who "takes orders" is another feature of the graft system, the more dangerous since its virus penetrates the very marrow of our institutions. The facts with which Mr. Steffens deals are superficial symptoms. Hardly any disguise of them is attempted in the ordinary talk of local politicians. One of the first things which practical experience teaches is that the political ideals which receive literary expression have a closely limited range. One soon reaches strata of population in which they disappear and the relation of boss and client appears to be proper and natural. The connection between grafting politicians and their adherents is such that ability to levy blackmail inspires the same sort of respect and admiration which Rob Roy's followers felt for him in the times that provided a career for his peculiar talents. And as in Rob Roy's day, intimate knowledge finds in the type some hardy virtues. For one thing, politicians of this type do not indulge in cant. They are no more shamefaced in talking about their grafting exploits to an appreciative audience than a mediæval baron would have been in discussing the produce of his feudal fees and imposts. Mr. Steffens has really done no more than to put together material lying about loose upon the surface of municipal politics and give it effective presentation. The general truth of his statement of the case is indisputable. But the same might have been said of the exhibits of the eighteenth century English reformers; and yet the impression made by them of decay and disease in the body politic has since been shown

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to be erroneous. The three stout volumes of Burgh's *Disquisitions* are crammed with accounts of bribery and corruption, making a more startling showing than that made by Mr. Steffens because more inveterate and extensive. Every part of the structure of government was involved, so that there appeared to be no spot of soundness where reform might find a lodgement and a starting point. Probably in every period of political transition, when an old order is giving place to a new, evidence of corruption has confronted the scrutiny of moralists. The formation of modern nationality itself originally wore the appearance of corruption to observers prepossessed by the ideals of the past. History has vindicated feudalism as a reparative process in the organization of society after the collapse of imperial rule. May it not be that the new feudalism which has developed in American politics, despite all its gross exactions of tribute, is also a natural development from constitutional conditions? When the English reform excitement was at its height, Hume acutely remarked that "those who complain of corrupt and wicked ministers, and of the mischiefs they produce, do in fact most severely satirize the constitution of the state, for a good constitution would exclude or defeat the bad effects of a corrupt administration." This is no more than saying that if a business is well organized, employees cannot steal without being found out and dismissed; but propositions which are obvious as applied to ordinary business affairs do not appear to be readily apprehended in relation to the public business, although there is no essential difference. Hume's opinion that the corruption of his times was due to bad conditions rather than to bad men turned out to be correct. It may be worth while to examine our own situation from this point of view.

Mr. Steffens gives blunt expression to the opinion that the typical American business man is the great source of municipal corruption. "He is a self-righteous fraud, this big business man. He is the chief source of corruption, and it were a boon if he would neglect politics." In his article upon "Tweed Days in St. Louis," Mr. Steffens says that "when the leading men began to devour their own city, the herd rushed into the trough and fed also." But in the same article, referring to the traffic in franchises, he remarks: "Several companies which refused to pay blackmail had to leave." In other words, conditions existed to which business interests had to submit or perish. The case does not suggest business initiative of corruption, but rather compliance with it upon the universal principle that if you want to do business you must meet the established conditions.

The nature of those conditions is not difficult to understand if one

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is able to separate fact from fiction with regard to the suffrage. From the psychological principle of association of ideas it is difficult to separate anything in thought from the use it has served, and such has been the instrumental value of the suffrage that intrinsic qualities are habitually attributed to it of the most absurd character. The increase of literacy and the spread of agencies for diffusing information have imparted to the body politic in modern times a nervous organization unknown before, developing a public consciousness which is the true source of what is known as the democratic movement. The suffrage has played a wonderful part in serving the activities of this public consciousness, but it is merely a vehicle of impulse and its utility is strictly regulated by conditions. Want or desire does not alter in moral quality nor gain in real authority because it happens to be expressed through the suffrage. The right of the majority is a useful fiction as a rule of practical convenience, but if it is manipulated so that it is a pernicious humbug the appearance of corruption may be a healthy manifestation. Instead of being the betrayal of democracy it may be diplomatic treatment of ochlocracy, restraining its dangerous tendencies and minimizing its mischiefs. If any of our large cities should be preserved like Pompeii to remote ages, the archæologists of that period, even without any historic record, would be bound to conclude that the society which evolved such structure was not deficient in great qualities of character; and if some of the lamentations of our reformers should be disinterred, telling how the men of affairs in our times corrupted the government in securing opportunities of enterprise, most assuredly those archæologists would rejoice that they had done so. It is better that government and social activity should go on in any way than that they should not go on at all. Slackness and decay are more dangerous to a nation than corruption.

In order to appreciate the functional office of the suffrage, a clear distinction must be drawn between administration and control. As an instrument of administration the suffrage, from the nature of things, is of very limited value. What can be more absurd than to think that the average citizen, who finds it hard to judge of the qualifications of a clerk or a salesman or to pick out a competent servant for his household, can by any sort of political hocus-pocus be invested with the ability to make a real choice of governors, mayors, judges, clerks of court, district attorneys, sheriffs, constables, tax-collectors, assessors and school commissioners? It is obvious, when one discards cant and exercises common sense, that government by direct administration of the people cannot really be carried on except in small com-

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munities, having common and well understood needs quite level with the ordinary capacity of citizenship. Communities in such a situation might just as well choose their officers by lot as by election, as was demonstrated in ancient Greek communities. But in any growing and progressive community diversity of needs and interest is inevitable and specialization of functions becomes necessary. Administration of the government by election then collapses, and the pretence that it is retained is constantly contradicted by actual facts. To assign to the people a power which they are naturally incapable of wielding is in effect to take it away from them. And this is the concise philosophy of boss rule. Genuine democratic government becomes impossible when the suffrage is applied to uses of which it is not capable; the practical result of the system of filling administrative posts by popular election is ochlocracy; and boss-rule is an expensive antidote for ochlocracy provided by the instinctive good sense of the American people. The system is as firmly based upon social necessities under existing conditions as the old feudalism which it resembles in its essential character. So long as those conditions, now inherent in our constitutional arrangements, continue to exist, so long will the boss system endure; and it will secure its revenues and emoluments, no matter how greatly they may be reprobated under the name of graft.

The general tendency of attacks made upon the system is to confirm it by aggravating the conditions which produce it. There are lower depths of corruption than those so far reached; and the movement for what is known as the direct nomination system is likely to sound those lower depths. That movement proposes to parallel the present system of filling a long list of administrative posts by popular election, by choosing party nominees also by popular election. It is seriously preached as a moral duty that the average citizen shall take the time to inform himself upon the personal qualifications of the various candidates, sometimes numbering fifty or more at a time. How does the obligation arise? If sociologists are not mistaken, the paramount duties of the individual man are grouped about the functions of subsistence and reproduction. Or, in every day speech, the chief duty of every man, as a member of society, is to earn his living and provide for his family. What political obligation can contravene this fundamental obligation? Are institutions made for the people or are the people made for the institutions? The latter appears to be the view of those laboring for direct administration, but no such palpable humbug can be foisted upon the people. The mass of the people will quite properly hold that they have more important things to attend to then

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electioneering. They will leave that to those to whom it offers rewards. In practice the system will mean the legal establishment of gang rule. The law may provide equal terms but cannot provide equal conditions. It is obvious that if there were rewards for all comers two miles up in the air, only those able to get balloons would share in the distribution. Any free-for-all terms which election laws may make as regards nomination to office will be just as closely restricted to class opportunity. The crowning touch of absurdity and immorality is put upon the whole scheme by the assertion, sometimes made, that after the selection of candidates has been put in the hands of the people there will be nobody to blame if results are bad, since the people are entitled to bad government if they want it. Here is, indeed, a doctrine such as Burke would have called "a digest and an institute of anarchy." What is government for but the maintenance of justice? No more besotted claim of prerogative was ever advanced than that any body of men, however high they may heap voting papers in ballot boxes, have a right to perpetrate iniquity. A constitution which produces bad government is a bad constitution, and nothing can give it moral sanction. The extent to which such anarchic ideas prevail among reformers is a far more serious symptom of moral degeneracy than grafting. It is an aphorism of practical politics, for which a biologic explanation might be given, that the offices must bear the cost of filling them. The more elective offices the greater the cost of the government. So long as the people tolerate the system they will have to bear the expense, call it graft or what you will.

These views may appear cynical since they antagonize the political mythology now in vogue. The thought of the day is indoctrinated with the idea that, back of the real people one sees in the shop, the factory or the office, there is an ideal citizenship of great purity and intelligence which if brought into political activity would establish the integrity of our institutions. This hallucination energizes the direct nomination movement. The underlying purpose is to open free channels for the activity of that ideal citizenship. It is also traceable in the absurd importance attached to studies in the technique of government. The assumed existence of that ideal citizenship implies the need of educating it in its duties. Hence great effort is being made to spread the study of civics. Even lads whose chief interest in life is centered in their tops and marbles are considered fit subjects for cramming with civics. In this direction, the great superstition that education can create character as well as train faculties goes to its most extravagant length. But if we regard statecraft as an activity analo-

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gous to other social activities, we shall not consider it an imputation upon the competency of the people to say that they are unfit to select their administrative officers, any more than it disparages the business capacity of the shareholders in a stock company to say that as a body they are unfit to appoint the clerks, book-keepers, salesmen and other administrative agents of the company. No sensible man will dispute the latter proposition. The essential principle of business control is universally recognized to be the delegation of administrative duties to a responsible management which, having full power, is subject to full responsibility for results. The notion that people should fit themselves for government by the study of civics is as if shareholders should qualify themselves in the practical management of the business of the corporation in order to secure proper administration of their interests. All that is necessary is an intelligent standard of requirement with a proper organization of responsibility, and the conduct of public business involves no different principles. Instead of the people themselves assuming the impossible task of looking after their servants and being continually fooled and bamboozled, they can turn that business over to a head servant and let him hire the rest and be responsible for them. We do this in the federal government but not in state or municipal government, and here the situation beautifully illustrates the Spanish proverb that the more you grasp the less you hold.

While the suffrage is incapable of serving as an organ of administration, it is capable of serving as an agency of control; but to be an efficient instrument of control, it must act upon some organ of government possessing administrative authority so complete that it may be held to full accountability for results. It is just because such an authority exists in Switzerland that that country is able to maintain such an advanced type of democratic government. Executive authority is so concentrated, and the connection between the executive and legislative departments is so simple, direct and immediate, that not even the mediation of party organization is needful to secure popular control over the conduct of the government. It is the principle of concentrated responsibility with which we are familiar as the basic principle of all business organization. In our governmental arrangements we have deviated from that principle by using the suffrage for administration. We have split up executive authority among a number of independent and coördinate administrative servants, who are practically irresponsible during their term of office if they are shrewd enough to keep out of the clutches of the criminal law. Thus they are put in a position to control the people instead of being controlled by the people. And

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in employing the suffrage in its proper use for representation, we make it ineffective by disconnecting legislation from administration. We elect a mayor to represent the community as a whole, but we do not give him the right nor do we make it his duty to present the public business to the legislative branch or to bring it to decision. That is left to the good-will and favor of the representatives of localities. Why should we wonder if they turn such irresponsible power to lucrative advantage?

The growth of an extra-legal system of connecting the disconnected functions of government for administrative purposes certainly entails corruption, but it does not follow that under such circumstances it is disadvantageous although founded upon venality. Our ordinary system of municipal government is so opposed to all sound principles of business organization that it is highly creditable to our practical capacity for government that we are able to work it at all. The graft system is bad, but it is better than the constitutional system as established by law. Mr. Steffens himself supplies evidence upon this point. In Chicago, after a reform movement had triumphed, he says:

> I found there was something the matter with the political machinery. There was the normal plan of government for a city, rings with bosses, and grafting interests behind. Philadelphia, Pittsburg, St. Louis, are all governed on such a plan. But in Chicago it didn't work. "Business" was at a stand-still and business was suffering. What was the matter?

Mr. Steffens goes on to say:

> I spent one whole forenoon calling on the presidents of banks, great business men, and financiers interested in public utility companies. . . . Those financial leaders of Chicago were "mad." All but one of them became so enraged as they talked that they could not behave decently. They rose up, purple in the face, and cursed reform. They said it hurt business; it had hurt the town. "Anarchy" they called it; "socialism." They named corporations that had left the city; they named others that had planned to come there and had gone elsewhere. They offered me facts and figures to prove that the city was damaged.

It is possible that these business and financial magnates knew what they were talking about, and that it is better for a city government to lend itself to the operation of the forces of progress even through corrupt inducements than to toss the management of affairs out upon the goose-common of ignorance and incompetency, however honest. Reform which arrests the progress of the community will not be tolerated

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long by an American city. On the other hand, it is quite possible that public men who have done great things by methods which have brought obloquy upon them may be esteemed when the results of their activity are appreciated. The people of Washington city now regard as a public benefactor a boss of this type and have recently erected a statue to his memory. Historians speak respectfully of one Julius Cæsar, who rose to eminence not upon the recognized lines of the constitution but as a popular boss. He is now credited with having done a great deal for his city and its dependent territories.

If these considerations are sound it may be fairly argued that they raise a greater mystery than they explain away. How is it possible to reconcile with the good sense and business capacity of the American people the growth of governmental arrangements so antagonistic to rational principles of organization? I confess that this phase of the problem has often puzzled me. Ordinary political theory is certainly oblivious of political fact to an astonishing degree. For instance, popular election of public treasurers is ordinarily justified upon the ground that it is necessary for the safety of the public funds to put them in the custody of an independent official not subject to removal by any other authority save the people themselves. The facts are all the other way. The public is not exposed to loss by the appointed treasurers of the United States, but it has lost millions through the elected treasurers of state and municipal governments. Although the growth of suretyship as a systematic branch of business enterprise is reducing risks of loss through absolute defalcation, yet those on the inside of affairs know that the manipulation of public funds in connection with elective fiduciary offices is an extensive department of the graft system, while this particular development of graft is unknown under the federal government. And yet these notorious facts do not perceptibly affect public adherence to the theory. At this very time the appointment of federal postmasters by popular election is receiving organized and influential support as a reform measure, despite every day experience of the fact that in practice this would mean irresponsible appointment by local bosses. A satirist might extract from American politics many fresh instances in confirmation of Robert South's opinion expressed nearly three centuries ago: "The generality of mankind is wholly and absolutely governed by words and names, without — nay, for the most part, even against — the knowledge men have of things. The multitude or common rout, like a drove of sheep or an herd of oxen, may be managed by any noise or cry which their drivers shall accustom them to."

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But satire loses in comprehension what it gains in point. The persistence of ideas is an essential feature of the principle of social continuity which gives stability to political conditions. The ideas which have shaped our governmental arrangements are of the same class as those which were at the bottom of the past corruption of English politics. The derivation is distinctly traceable in our political origins. The check and balance theory of government which still controls our political thought was a colonial importation. Some perception of the true principles upon which democratic authority may be founded is shown in the Federalist;[1] but at that stage of constitutional development exact appreciation of those principles was impossible. Popular government was still undeveloped, and the principle of the separation of powers was not construed in its true significance as relating to the functions of government, but as an apportionment of power among classes and interests so as to confine prerogative upon the one hand and popular influence upon the other. The chief concern of the framers of the constitution was to erect barriers against democratic tendencies, and they used the check and balance theory for that purpose. As democratic tendencies gathered strength, they also settled upon the check and balance theory by natural momentum of thought, applying it to their own advantage. The class control which the gentry enjoyed under the closely restricted suffrage of the first period of the Republic was broken down by the extension of the suffrage and by the conversion of appointive posts into elective offices. The precautions taken by the framers of the constitution to secure executive unity proved so effectual that the latter movement was frustrated so far as the national government is concerned, but it has swept through state and municipal constitutions with increasing vigor until all the functions of government have been both disconnected and disintegrated in a way which leaves public opinion with no embodiment of authority capable of giving it complete representation or of assuming full responsibility for results. The stages of the process were not wholly disadvantageous so long as they were steps in the acquisition of power by the exponents of democratic tendencies, through partition of authority originally aristocratic in its tenure. But with the triumph of democratic principles of government, the partitions of power now useless as shelters from the class oppression against which they were reared,

[1] See particularly No. 70, a masterly argument on the thesis that "the executive power is more easily confined when it is one"; also, Nos. 47 and 48, wherein it is argued that separation of the powers of government does not mean their disconnection.

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became obstructions which defeat democratic control by preventing its efficient exercise. No one now disputes popular sovereignty, but the people are in the position of the Grand Turk, who can cut off the head of an offender but whose affairs are so out of control that he is robbed right and left by his servants. What makes the situation more exasperating is that it is becoming a matter of common knowledge that democratic control is more complete and effective in some other countries than in our own; but the usual inference that we have somehow lost what our institutions were intended to secure is a fallacy. Our institutions have not lapsed from democracy into plutocracy; they never were democratic, and their present plutocratic character arises from the substitution of money power for the original aristocratic control. In other countries where democracy has arrived, it has not had to devise its constitutional apparatus but has had the far simpler and easier task of attaining control over that already in existence, whereas American democracy has never had a competent organ of authority. In developing such an organ we shall have to work out a constitutional application of the principle that division of the functions of government must be associated with administrative efficiency. The final result may be the formation of a new type of government. The exact form which it will assume it is now impossible to anticipate, but we can at least be certain from the very nature of sovereignty that there will be an organic connection of the executive and legislative functions. So long as the legal frame of government does not provide for that connection, it will take place outside of the legal frame; in which case we are in the habit of calling it the "machine" or the "ring" and of regarding it as a malignant excrescence upon constitutional government, whereas it is in fact the really constituted government, and the formal constitution is but a pretence and a sham.

The municipal situation is not really so desperate as one might think from a perusal of works like that of Mr. Steffens. Genuine improvement is going on through the undermining of our traditional constitutional principles under stress of practical necessity. In such charters as those of New York and Baltimore, the disconnection of the executive and legislative functions which is the root of ring rule is being practically overcome by the creation of boards of estimates and apportionment, which really unite executive and legislative powers in the same organ of government. Such appliances of government will gradually spread to other cities from the effect of example. In most cities, however, matters are likely to be worse before they are better; but even at the worst there are mitigating circumstances. Just as mediæval feu-

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dalism was a powerful agency in binding together the masses of the people into the organic union from which the modern state was evolved, so too our party feudalism performs a valuable office by the way it establishes connections of interest among the masses of the people. To view the case as a whole, we should contrast the marked European tendency towards disintegration of government through strife of classes and nationalities with the strong tendency shown in this country towards national integration of all elements of the population. Our despised politicians are probably to be credited with what we call the wonderful assimilating capacity of American institutions. They are perhaps managing our affairs better than we are able to judge. We certainly do not know how to manage the politicians, but that is a branch of knowledge which no people acquires save as the result of a long course of education in the school of experience. There is no royal road to learning even for the sovereign people of the United States.

HENRY JONES FORD.

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REVIEWS.

The Police Power: Public Policy and Constitutional Rights. By ERNST FREUND. Chicago, Callaghan & Co., 1904. — pp. xcii, 581.

A distinguished writer has said that "the police power is the dark continent of our jurisprudence. It is the convenient repository of everything for which our juristic classifications can find no other place."[1] In his preface Professor Freund tells us that "the term police power, while in constant use, and indispensable in the vocabulary of American constitutional law, has remained without authoritative or generally accepted definition." When called upon to examine a new work upon the subject, therefore, the first questions one asks are: Has the author accounted satisfactorily for the lack of an accepted definition and has he in addition succeeded in formulating for us a definition likely to be generally accepted because it brings out clearly the meaning and scope of the term as it is used in our constitutional law?

Two methods may conceivably be used to attain to a satisfactory definition. One is to formulate the definition from a careful study of the cases; the other, first to formulate a definition by means of a philosophical analysis and classification of the powers of government in the abstract, then to show by a discussion of the cases that the definition so obtained is correct. Of these two methods, Professor Freund has chosen the latter, with perhaps not entirely satisfactory results.

Surveying the field from his chosen point of view, the author finds that the powers of government are to be grouped according to their purposes, and that "the great objects of government are three in number: the maintenance of national existence, the maintenance of right, or justice, and the public welfare." Under the first fall the creation of an adequate governmental organization, the management of foreign relations, the conduct of war, the suppression of insurrection and the provision for ways and means with which to accomplish these things by the exaction of service and the exercise of the rights of eminent domain and taxation; under the second, the administration of civil and criminal justice, primarily through the rules of the common law, supplemented however by statutory law; under the third, the improvement of social and economic conditions affecting the community at large and collectively, with the view to bring about the greatest good

[1] Burgess, Political Science and Comparative Constitutional Law, ii, 136.

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to the greatest number. The police power, says Professor Freund, is the power to accomplish the purposes enumerated in the third group, *i.e.*, it is "the power of promoting the public welfare by restraining and regulating the use of liberty and property." After discussing the methods of the police power, the author sums up his conclusions upon this part of the subject as follows: "The police power aims directly to secure and promote the public welfare and it does so by compulsion."

Does this definition accord with the usage of the courts? Professor Freund makes no attempt to answer this, but assumes, without discussion, that it does. Is he justified in the result? It should be noted in passing that he interprets his definition as meaning that all laws which have the aim and which operate in the manner set forth are police laws. When, therefore, he comes to inquire into the location of the police power in the federal system of the United States, he finds himself led inevitably to the conclusion that, while "the bulk of the police power remains with the states, the federal government exercises a considerable police power of its own." As an example, he cites the power of the United States Congress to "prohibit and suppress objectionable forms of traffic," of course only so far as the traffic is interstate or foreign.

It may well be doubted whether this presentation of the subject will do more than add confusion to that which already existed. Granting that from the standpoint of the political scientist Professor Freund's definition of the police power is unassailable, does it help the student of our constitutional law to use it in the classification of laws, both national and state? Does a discussion of the scope and limitations of the police power of our states aid us much in determining the same things in the case of the so-called "police power" of the national government? Suppose we determine whether or not a state may constitutionally forbid the introduction from other states of lottery tickets; do we then know whether or not the Congress of the United States may do the same thing? Obviously not. The discussion of that question involves very different considerations. The law of Congress, if held constitutional — as it is, — is supported as a regulation of commerce among the states; the state law, if upheld, is classified as a valid exercise of the police power of the state. Professor Freund would classify them both as police laws, doubtless a correct classification, as has been said, from the point of view of political science, but of doubtful utility from the point of view of constitutional law. In other words, is it not better, from the standpoint of the lawyer, to discuss the question of the power of Congress to pass the law referred

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to above, in a work on the commerce clause, rather than to attempt to deal with it in connection with the police power of the states? Because both laws accomplish the same purpose, it by no means follows that they are to be classified, from the juristic point of view, under the same heading.

Professor Freund's division of his subject, after he has disposed of these questions of a general nature, is interesting, and will doubtless meet with little, if any, criticism. "There are," he says,

> broadly speaking, three spheres of activities, conditions and interests which are to be considered with reference to the police power: a conceded sphere affecting safety, order and morals, covered by an ever increasing amount of restrictive legislation; a debatable sphere, that of the proper production and distribution of wealth, in which legislation is still in an experimental stage; and an exempt sphere, that of moral, intellectual and political movements, in which our constitutions proclaim the principle of individual liberty.

This threefold division forms the basis for the analysis of the legislation which follows.

Limitations of space prevent even the mention of the subdivisions into which the main topics are divided. Doubtless here the author will encounter some adverse criticism, a necessary result, however, from the fact that the subject dealt with by the book is practically in its infancy. Under such circumstances the author is entirely justified in claiming the right to a considerable degree of independence in the classification and formulation of principles.

It would be difficult to praise too highly the scholarly and painstaking care with which the results of the cases have been analyzed and stated. The text is not, as in the average legal text-book, a mere stringing together of long extracts or mere condensations from the opinions of the courts, but forms a logical and connected discussion, the results of the cases and the principles upon which the courts based their actions being stated with a clearness and conciseness to be cordially commended to the writers of the text-books before mentioned. This method of presenting the subject has enabled the author to include in his discussion substantially all the important cases in both national and state courts. In addition, the book is well printed and bound, and is equipped with an adequate index which will add greatly to its usefulness. While, therefore, it cannot be truthfully said that Professor Freund has done all that is desirable in clearing away the mists which surround the

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fundamental questions connected with his subject, the book is nevertheless far and away the best yet offered to the wanderers in the mazes of this branch of our constitutional law and is therefore an indispensable guide, alike for practitioner and student.

WALTER WHEELER COOK.

UNIVERSITY OF MISSOURI.

The Harris Papers. Collections of the Rhode Island Historical Society, Volume X. Printed for the Society, Providence, 1902. — 410 pp.

The history of the New England towns during the colonial period is full of controversies over land and its boundaries. These controversies divided families and neighborhoods and towns, and were as persistent as similar disputes between colonies or the ever-recurring contests with royal officials. The talent for scheming and wire-pulling, the self-will and persistence which were often displayed in these disputes would have done honor to men whose parts have been played on the stage of national politics. Indeed, the "politics" of rural communities of those times owed its origin largely to questions of this nature.

One of the most famous controversies of this kind was that which agitated Providence and Warwick, Rhode Island, for more than a generation prior to 1680. The man with whom chiefly it originated, and who prolonged it till finally it cost him his life and a large part of his estate, was William Harris. In the older histories of Rhode Island he appeared in shadowy outline as, for some undefined reason, an opponent of Roger Williams. In recent years, however, the inquiries of Rider, Dorr and Richman have brought his personality out into much clearer relief. It has now become evident that, in merely town affairs, he was as prominent as Williams, while both by nature and by training he was a better political manager. A more litigious man it would be difficult to find in his day. The last thirty years of his life were devoted chiefly to one prolonged lawsuit, or succession of lawsuits, he and a few partners always appearing as plaintiffs. As the case proceeded it came not only before the Rhode Island court of trials, but repeatedly before special commissions, and before the King in Council. In its political aspects it came before the General Assembly. The town of Warwick, the town of Providence, and various individuals appear among the defendants. The question in dispute was always the location of the western bounds of Providence and the right to a

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tract of land of many thousand acres — the Pawtuxet purchase — which lay adjacent to those bounds.

Harris's interest in these lands dated from 1659, when he procured from certain Indian chiefs confirmatory deeds for them. In the year following they were accepted by the town of Providence. Roger Williams and others, however, did not believe that they lay within the original town purchase, but that the Indians had been made the victims of a land-grabbing scheme. The town of Warwick also claimed a portion of the tract. Individuals occupied parts of it without the consent of Harris. Against these parties Harris and his partners instituted suits before the tribunals already mentioned. In the courts he invariably won, but the Williams party controlled the town of Providence. Its influence, with that of Warwick, defeated the efforts of Harris to get execution and thereby to oust the defendants from the lands. While on his second voyage to England, in the process of appeal to the King in Council, Harris was captured by Barbary pirates and taken to Algiers. After remaining there as a prisoner for about a year and a half, he was ransomed and finally reached England. But he was already an old man, and almost at once succumbed to age and to the privations which he had endured. After the death of Harris there was no longer hope of the success of his cause. The bounds of the Pawtuxet purchase, however, were not finally determined till 1712, when the lines were so run as to exclude from it the large tract which Harris had formerly claimed.

In this volume have been brought together with special care and editorial skill all known, and as yet unpublished, material which bears on this controversy and on the public career of William Harris. Mr. Richman, the historian of the founding of Rhode Island, has furnished an introduction. Mr. Brigham, the librarian of the state historical society, has done the chief editorial work. With the assistance of Dr. Frank G. Bates he has prepared a valuable map of Providence with the ancient place names. A list of these names, with explanations, is also given. A calendar of the events in the life of Harris and a good index complete the useful features of this volume.

In the text will be found the correspondence of Harris, so far as it has been preserved; the proceedings of the various tribunals which heard his case, and a succession of detailed statements of the points at issue in the case prepared by representatives of both parties.

HERBERT L. OSGOOD.

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History of the United States of America. By HENRY WILLIAM ELSON. New York, The Macmillan Company, 1904. — xl, 911 pp.

Mr. Elson has written for the "general reader" a book that "falls between the elaborate works . . . and the condensed school histories," by which he means a narrative and critical account of the entire history of the United States in a single volume of about 400,000 words. He has aimed at "combining the science of historical research with the art of historical composition." He has attempted to "balance the narrative and critical features in intelligent proportion." He has "devoted much space to the life of the people." He has written without conscious bias, and "absolutely *sine ira*" (Preface).

So far as we can judge Mr. Elson has taken pains to make himself familiar with the latest results of historical investigation that have appeared in book form. It seems clear, however, that he is more at home in the national period than in the colonial and revolutionary periods, and that much valuable work buried in periodical literature has escaped his attention. There is evidence of this in the rather large crop of errors that may be gathered, as well as in some striking omissions which cannot be credited wholly to deliberate judgment. That a "feudal system" was established in America (p. 134); that Charles II had no "right" to take New Amsterdam (p. 139); that Louisiana was ceded to Spain by the Treaty of Paris of 1763 (p. 193); that the call for the first Continental Congress came from the "Sons of Liberty" in New York (p. 235); that the Jay treaty provided no recompense for the slaves carried off at the close of the Revolution (p. 357); that there is any doubt about the authorship of the Monroe Doctrine (p. 463); that Calhoun's change of views between 1817 and 1830 was due to thwarted ambition (p. 486); that Jackson's insight into human nature was "almost unerring" (p. 498); that Buchanan was the "victim of hypnotism" (p. 594); that the withdrawal of France from Mexico was due to American interference (p. 779); — these are examples of slips that are too frequent by far, though perhaps of no great importance in themselves. There are, however, errors that reveal lack of essential knowledge, rather than mere carelessness or lapse of memory. Mr. Elson is obviously quite unaware of any distinction between the Dutch "patroons" and the large landowners of the English period. "The patroons became the founders of the great families, afterwards so prominent in New York — the Van Rensselaers, the Schuylers, the Livingstons, and others." "The great estates . . . were held in the same families for more than two centuries" (p. 134); "The patroon

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system, which continued all through colonial days and far into the national period" (p. 203) — these sentences reveal a lamentable lack of knowledge of certain features of colonial New York. Mr. Elson, again, represents Washington's army as "fleeing like the hunted fox across the Jersey plains" (p. 261). This is more than a mere rhetorical exaggeration, for it indicates, what is sufficiently clear throughout the chapter, that Mr. Elson is unconscious of one of the great problems of the Revolution — the problem of Howe. The reader should remember that if the American army was "fleeing like the hunted fox," the British regulars at any rate were following leisurely enough — seven days from New Brunswick to Trenton! Of the regulator insurrection in North Carolina, it is said that in 1771 Governor Tryon fired upon the "people who had organized as 'regulators' to maintain public order" (p. 230). After this one is not surprised to find this sentence making part of a paragraph on the causes of the Revolution, the other part being an account of the Boston Massacre!

In a work of this kind the author's sense of proportion, of relative values, should be sure. Mr. Elson's sense of proportion, however, is extremely faulty. Although he says that much space has been devoted to the "life of the people," we find in fact that military events have received most attention. For the period between 1765 and 1900, there are 271 pages devoted to the 16 years of war, exclusive of the discussion of causes, and 420 pages to the 119 years of peace. Subjects as important as loyalists, amendments, migration to the West, Clayton-Bulwer Treaty, *etc.*, are relegated to the "notes and anecdotes." Four pages are given to Columbus's first voyage; a half page of notes to the achievement of Balboa, Magellan, DeGama, Cortereal, Cortez and Pizarro. That the discovery of America was a gradual process covering nearly a century, of which the voyages of Columbus were only a part, is nowhere so much as hinted. Twelve pages are required for the march of De Soto; less than a page of notes contains all that one learns of Narvaez, De Vacca, Coronado and Cartier. More than a page for Pocahontas; nothing for the origin of local government in Virginia. Besides, there are subjects of prime importance that are omitted wholly, or nearly so. The political aspects of Puritanism, the origin and essential character of the colonial charters, the growth of English institutions for colonial control, the conservatism and loyalist attitude toward the Revolution, the significance of Howe's military "blunders," the constitutional importance of the Louisiana purchase, the importance of the work of John Marshall, the negotiations that led up to the annexation of Texas, Calhoun's "nationalization" of the slavery question by

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his famous letter to Pakenham in 1844, and above all, the transcendent importance of westward expansion — these are some of the important things that Mr. Elson practically leaves out altogether.

Aside from these matters, Mr. Elson, we take it, exhibits no keen insight into the meaning of periods or movements, no scholarly grasp of the subject as a whole. His best work is in the narration of spectacular events, like the march of De Soto (chapter iii), or in the characterization of certain men with whom he is not too much in sympathy, like Washington (p. 361). The treatment of institutions is ordinarily inadequate and always conventional. In describing "colonial government" (p. 210), for instance, one notices that while the "able articles" of Professor Osgood are referred to, they are apparently misunderstood, and the description follows the old conventional lines in the main. The "criticism" which Mr. Elson promises us in the preface rarely rises above the commonplace; it never by any chance reveals originality. Criticism, indeed, with Mr. Elson, seems to consist largely in fixing the "causes" of great events and the rank of great men. A good illustration is the discussion of the causes of the Civil War (pp. 624 *et seq.*). What was the cause of the War? Slavery alone. Some say, states' rights. But what gave rise to the questions of states' rights? Slavery. Others say secession. But what caused secession? Slavery. Others say economic conditions. True, but these would have produced no war except for slavery. And so on: all very true, but quite useless. Slavery, we are left to suppose, was the great primal uncaused cause. Mr. Elson's criticism, too, is quite as likely as not to reflect his prejudices. We are to suppose that the Puritans, striving for religious liberty in England against "cruel," "despotic" and "bigoted" tyrants, are to be admired; but Roger Williams, striving for religious liberty in Massachusetts, is censured for "preaching revolution," and we are carefully reminded that no reproach can justly be directed against New England for the witchcraft delusion (pp. 98, 103, 109, 110). Likewise there is nothing to be said for the "slaveholder," except that he was "shrewd," "audacious," *etc.* His shrewdness, however, availed him little in a conflict with "the people," for when "the people" took the matter in hand by the "founding of a new political party" the doom of the "slaveholder" was sealed. Besides, he made one serious blunder, in allowing the matter to be appealed to the sword, *etc.* (p. 625). As a final instance of Mr. Elson's weakness in "criticism," we refer the reader to the attempt to rehabilitate the long defunct Pocahontas myth, in which there is involved, in a brief argument of three points, false historical method, ignorance of the facts and defective logic (pp. 63, 64).

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From the point of view of "historical research" it must be said that Mr. Elson has achieved a very indifferent success. As an example of the "art of historical composition" (Mr. Elson speaks of his attention to style three separate times in the preface) the book is equally open to attack. The immediate meaning is conveyed with sufficient clearness. There are, here and there, pages that are well done. But taken as a whole the style is without distinctive merit. It does not possess originality, dignity, force nor strict accuracy. Of more difficult attainments, such as logical continuity in sentence building, or coherence in paragraph construction, there is but little evidence.

The reviewer sympathizes with Mr. Elson's ambition, and has nothing but praise for his industry. But in all sincerity the reviewer believes that Mr. Elson has failed to realize the difficulty of the task or his own inability to perform it satisfactorily.

CARL BECKER.

UNIVERSITY OF KANSAS.

The Opening of the Mississippi. A Struggle for Supremacy in the American Interior. By FREDERIC AUSTIN OGG. New York, The Macmillan Co., 1904. — 670 pp.

While the subject of this book is comparatively a narrow one, the treatment of it is such as to have broadened it, not "here and there" as the author remarks in his preface, but almost throughout, into "an attempted history of the Mississippi Valley." After a few introductory words about the importance of this region, Mr. Ogg devotes four chapters to the story of its discovery and exploration, with the great river as his central theme, more or less. He then describes the foundation of Louisiana, its place in the European issues of the eighteenth century, and the process by which the United States secured the free navigation of the Mississippi in 1795. The last two hundred pages of the work are given over to an account of the Louisiana Purchase, its immediate antecedents, and the establishment of American rule in the territory up to 1815. The text of this portion of the volume is little more than a series of abstracts from Henry Adams's work.

A fair judgment of a book that is at once more than "timely" and less than scholarly, is difficult to render. The ordinary paste pot and scissors are not much in evidence. The ambition of the author to rise beyond the level of mere "timeliness," his wide and industrious reading, and the copiousness of his references merit acknowledgment. The bracing of every important statement with a solid array of authorities is usually a sign of diligent research, but not always one of historical

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utility. The citation of references in the book under consideration, inclusive even of "popular histories," text-books and journalistic productions, is pedantic at times to the extent that, apparently, Mr. Ogg has wished to mention almost all works ever written on the particular topic. Mere lists of books in foot-notes are obtrusive and wearisome enough to the general reader, and not at all satisfactory to him who may wish to broaden his reading intelligently. The scholar, on his part, demands a careful discrimination in the selection of materials, and a proper personal estimate of the value of each authority consulted.

The book abounds in explanations of trite facts and in more or less irrelevant digressions on the general history of the Mississippi region, the English colonies and international affairs in Europe. Nor are positive errors infrequent. To mention a few examples of such defects: the account given of the Indian troubles in the West after 1763 is interesting, but not pertinent to the main theme. The same might be said of the rather unctuous recital of the Napoleonic "bath-tub episode" (pp. 523–28). There was no struggle between Frederick the Great and Maria Theresa over the claim of the latter to the "Austrian throne" (p. 245). The "prime objects" of the British government in 1755, with all their warlike aspects, are attributed to that pacific statesman, Walpole (p. 267). Joseph de Galvez, the uncle, and not the father of Bernardo de Galvez, is represented as being the viceroy of Mexico and the president of the Council of the Indies at the same time (p. 367). Errors are common in the statements concerning the Family Compact of 1761 (pp. 286–87), the cession of Louisiana to France in the following year (pp. 287–88), and the share of Wilkinson in the intrigues for severing the West from the Union (pp. 442–44). "The province of Louisiana," also, was not "destined to be handed back and forth among the nations yet several times," after 1762, "before it should find its permanent place under the flag of the United States" (p. 341). It was "handed forth" but once.

Whatever value the book possesses lies merely in its attempted concentration and combining of various well-known facts in the treatment of a single topic. Had the author confined himself strictly to that topic, and converted his bibliographical foot-notes into critical appreciations of his authorities, *The Opening of the Mississippi* might have been a useful addition to the literature of American history.

WILLIAM R. SHEPHERD.

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The Place of Compensation in Temperance Reform. By C. P. SANGER, M.A. London, P. S. King & Co., 1901. — vii, 135 pp.

The Case for Municipal Drink. By EDWARD R. PEASE. London, P. S. King & Co., 1904. — viii, 169 pp.

The problem of compensation for displaced publicans occupies an important position in every practical discussion of temperance reform in England which contemplates a reduction of the number of licenses. The conditions of the traffic in that country are vastly different from those in the United States, and only the radical minority take the strictly legal ground that the state is under no obligation to the liquor dealer after the expiration of the term for which his license is granted. Mr. Sanger's book is an English lawyer's brief for full compensation either in money or by such an extension of the license-holders' term that no financial interests would be disturbed seriously. He lays the basis of his argument first in political theory, and, after an examination of the doctrines of Austin, Bentham and Sidgwick, he arrives at the conclusion "that in every case where there is great disappointment of expectation by the legislature, there is a *prima facie* case for compensation." Mr. Sanger then makes a short review of the important English precedents, showing the uniform practice of the legislature in allowing compensation even where the disappointed expectation was based upon criminal acts. The precedents of other countries are dismissed with a brief notice, those of the United States with the conclusion that "to argue from the case of a nation whose legislatures enact laws which are not intended to be enforced to the case of this country would be fruitless." The third chapter is devoted to proving that the expectation which the license carries with it is such that the legislature can find practically no more justification in cancelling it without compensation than in confiscating any other form of property. Mr. Sanger demonstrates by legal decisions, insurance rates and statistics that the probability of the renewal of licenses is extremely high — in fact almost a "practical certainty." On the basis of this "practical certainty," argues the author, capital is invested, mortgages are taken, death duties are collected and the financial operations of a vast number of people are carried on. In short, by long continued policy, the state transforms a legally terminable license into a more or less permanent form of property, and should not suddenly reverse that policy without compensating those who derive or expect to derive revenue from its continuation. The fact that the license is not prop-

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erty in the full sense of the term, the author offsets by the contention that expectations and customary rights not recognized by law are constantly being compensated. The proposals and opinions of prominent public men are reviewed in chapter five and in conclusion the basis and sources of compensation are considered. Mr. Sanger believes in full compensation except where part of the value of the license arises from illegal selling — a concession as amusing as it is futile. As an alternative to money compensation, the author suggests that all licenses might be made terminable in thirty years without any considerable loss to the holders. Time seems to be the source of compensation which most reformers agree upon, but few of them contemplate a period of thirty years. The term in South Australia is fifteen years, and, while the liquor traffic is more strongly intrenched in England, it may well be doubted whether Mr. Sanger will succeed in convincing any large proportion of those who really carry temperance measures to victory in Parliament.

Mr. Pease's book is a Fabian argument for the municipalization of the drink traffic. It does not pretend to be an original contribution to the literature of temperance reform; it is a concise statement of the case designed for political purposes. The author does not agree with those who believe that the consumption of intoxicants is inherently evil, and he indulges in no optimistic fancies as to the effect of municipal control in reducing the amount consumed. He believes that the right temperance policy is to replace spirits with beer and improve the conditions of supply, but he regards the financial argument for municipalization as the decisive one. He would have municipal ownership for the prime purpose of securing to the public the enormous profits of the liquor traffic. Mr. Pease is not pessimistic as to the outlook for temperance; he thinks that its promotion may be safely left to moral agencies aided by municipal counter attractions, but he wants no patronage of drinkers by superior persons with schemes to "elevate" the lower classes. The author does not share the widespread belief that English drinking habits are to a great measure responsible for the losses in the race for markets; he points out that some of the chief competitors drink as much net alcohol. A large portion of the book is devoted to a discussion of the need for reform, high license, local veto, prohibition, state control abroad, and the experiments in company management in England, resulting in the conclusion that municipalization is, for moderate reformers, the only alternative. The plan of municipal control which Mr. Pease suggests is extremely flexible. He does not propose to make the assump-

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tion of public ownership immediately complete or compulsory or the control a monopoly. He would have Parliament empower local authorities to make a large range of experiments and extend their operations according to practical results. As to compensation, Mr. Pease seems to think ten years' purchase of the annual value of the license would constitute a fair remuneration for those displaced at once. The complicated problems of administration and the dangers of corruption, he regards as no greater than those at present connected with municipal undertakings.

CHARLES A. BEARD.

The Negro Artisan: A Social Study, made under the direction of Atlanta University by the Seventh Atlanta Conference, and edited by W. E. BURGHARDT DU BOIS. The Atlanta University Press, 1902. — viii, 192 pp.

Of the total number of negroes in this country nearly 90 per cent are engaged either in agriculture or domestic service. Roughly speaking, about five per cent are skilled workmen, as against nearly 20 per cent for whites. Inasmuch as the vast majority of negroes live in the South and the South is developing many industrial interests besides agriculture, it becomes especially important to know what is happening relative to the artisan class of negroes.

This pamphlet is packed with information on that topic, much of it possessing deep interest for the general public, though perhaps most of it is too detailed and complicated to be useful to any save close students. The arrangement, however, is such that the general reader can readily get what is desired without troubling himself about more intricate portions. The study is divided into 64 sections, and at the outset notice is given to the reader pointing out what sections are of general interest.

Statistics are a prominent feature, numerous tables being presented which have reference to industrial training for negroes, their occupations, the distribution of the negro artisan throughout the United States, the gain or loss in numbers in various localities, *etc.* Perhaps more interesting, if not equally valuable, are the historical portions in which the career of the negro artisan class is sketched and also the development of his industrial education. The latter topic is quite fully treated: the curricula of industrial schools, for example, their number and cost, their strength and weakness, and their practical results are set forth. The relations of the negro artisan with trades unions are ex-

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amined, and some significant information is furnished. Similarly as regards his relations with the employing class. In a word, it would be difficult, if not impossible, to find elsewhere within equally small space more useful and important knowledge relating to this race in America.

The reliability of no small part of the data collected is seriously to be questioned, *viz.* such data as were secured by sending out to hundreds of individual negroes a schedule of questions. In the first place, how far can we trust the accuracy and fidelity to truth of the answers, when the plain intent of these is to reveal whether the individual concerned has led a creditable life or not? Manifestly there would be an almost irresistible impulse to state only what was creditable and to omit equally important facts that did not appear well. In every case possible, it is true, efforts were made with fair success to verify the answers made by reference to other witnesses, such as fellow-workmen, employers and others in the community. Nevertheless a wide margin of error must inevitably be suspected in the results of such a method. In the second place, it is a very grave defect of this method that precisely those who cannot make a good showing will not be heard from, since they will not choose to report themselves. Thus it happens that, in working out the results, it is actually a sifted class that is dealt with, and not the indiscriminate mass.

Every one deeply interested in our negro population hopes to receive favorable light from each new work bearing upon them. A careful consideration of this study and of its cautious and very fairly stated conclusions leaves one with the feeling that after all we are by no means assured of the negro artisan's industrial safety and upward progress. For instance, we are told in the principal paragraph of the summary that

> There are a large number of negro mechanics all over the land, but especially in the South; some of these are progressive, efficient workmen. More are careless, slovenly, and ill-trained. There are signs of lethargy among these artisans and work is slipping from them in some places; in others they are awakening and seizing the opportunities of the new industrial South.

We are told further in the summary that the slave-artisan was "for the most part careless and inefficient," a first-class mechanic being the exception; that industrial training is badly needed, and is costly; that the prejudice of trades unions keeps the mass of negroes out of many trades; that "employers on the whole are satisfied with negro skilled

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labor," while there is a divided opinion as to the practical value of industrial education; and that the negro "evinces considerable mechanical ingenuity." Both dark and bright are so commingled here that one can scarcely decide which preponderates.

Meanwhile, there is one extremely important factor in the situation, which this study, admirable as it is, quite ignores. Nowhere does one find the faintest suggestion that among the various hindrances to his upward progress against which the negro must struggle may be one, which is all-pervading and fundamental, *viz.* an inherited nature not equal to the task set for it under the conditions presented by the United States to-day. The only difficulties of which we hear are lack of training, hostile race-prejudice, the sudden and rapid industrial changes in the South, and other environmental circumstances. We are familiar enough with the fact that the situations in which individuals find themselves placed from the moment of birth vary widely, and that in the struggle for life many seem to be overborne by adverse circumstances alone — an explanation they themselves and their friends usually offer. Yet stronger natures overcome adverse circumstances and succeed. We are not familiar with the idea of applying this principle to the case of the negro, and asking whether he has to overcome adverse circumstances alone, or, in addition to these, certain inherited characteristics, not advantageous for him under present conditions. Yet this is the vital question, so long as the race is not isolated, but must measure its strength against that of white competition.

Of course environmental forces play a part, indeed a peculiarly important part, in making the negro what he is; and it is unquestionable that many of these forces are sadly against him, yet need not and ought not to be so. To ascertain exactly what they are and to strive for their diminution is certainly our duty. But if we study and plan without recognizing the force of racial heredity, on the off-hand assumption that the negro and the Caucasian are in this respect on an equal vantage ground, then we need not be surprised if time reveals misdirected effort and ill-founded hopes. To secure a really useful knowledge of the negro hereditary endowment and of its divergences from that of the Caucasian is a profoundly difficult undertaking, but surely not a hopeless one. Some beginnings in this direction have already been made, and it is to be hoped that future studies of the negro in this country will devote increasing attention to it.

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The Negro Church. A Social Study. Made under the direction of Atlanta University by the Atlanta Conference. Edited by W. E. BURGHARDT DU BOIS. Atlanta University Press, 1903. — 212 pp.

In this compilation of forty sections are comprehended short accounts of primitive negro religion and the negro church, a summary statement of missionary work among the negroes in slavery, sketches of noted preachers, church statistics and details regarding the various denominations, studies of local churches, and criticisms of the character of negro preachers and negro religion of the present. The reports and statistics are from various sources; the historical sketches are by the editor. The local studies, by different persons, are of great value and throw much light upon the condition of the negro church at present. Inquiries made by the conference among negro laymen and Southern whites make it clear that a large proportion of the negro ministers are unfit to be moral leaders — debts, women and drink being the chief stumbling blocks. In many localities the lay pillars of the church are of lax morals. Young men in the church are few. Divisions in churches and secessions are frequent, especially in the Baptist church. The statistics are drawn principally from the census of 1890, but in some cases have been brought down to date.

The historical sketches by the editor are interesting but a little one-sided; the census of 1890 has a fuller and more impartial history of each denomination. The conversion of the negroes to Christianity seems of less importance to the editor than the restrictions upon half-savage negro congregations. The sketch of early efforts at conversion is principally a summary of the restrictive colonial legislation designed by the whites to crush the pagan practices of the Africans and to regulate the negro preacher, who was then usually the leader in all race troubles. Negro conversion really became general about the end of the eighteenth century, when "the Rights of Man" were believed in, and after the rigid discipline of slavery had partially crushed out heathenism, thus preparing the negro for conversion to Christianity by the enthusiastic Methodists and Baptists, who were then beginning their marvellous expansion. But Mr. Du Bois does not think that the negro needed to be prepared to receive Christianity. His theories and opinions are interesting, especially since they are the exact opposite of those held by the Southern whites. His thesis is that the negro was better off in Africa than in American slavery and that the blacks cannot remain in the same churches with the whites. He maintains: (1) that the negro church is the sole surviving social institution from Africa, that it was heathen but is now Christian, that the African priest, with

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his vast power, survived in the Christian negro preacher; (2) that slavery destroyed the African family and definite and long-formed political, social and religious habits, that the African polygamous family was a powerful insititution, greatly superior to the slave family; (3) that the blacks must have churches separate from the whites because the latter do not, and have never, admitted the negro to a proper participation in church government. The historian of slavery will, on the other hand, assert (1) that slavery forcibly destroyed African superstition and voodoo worship and substituted the Christian religion, that the negro church is a borrowed institution; (2) that there was no family life worthy of the name in Africa and that the negro family, such as it is, was forcibly created in slavery; (3) that the blacks in the white churches served a period of necessary probation, being on exactly the same footing that white children were.

In some way, by 1865 there had come to be hundreds of thousands of negro Christians. Most of these were in Southern white churches, whose work receives scant notice. The fact is overlooked that the most fruitful missionary work among the negroes was done by the Southern churches after 1845 when the Methodist and Baptist denominations in the South drew away from the Northern churches. They were then free to work among the slaves without fear of being suspected as abolitionist agents. Of the separation of the negroes from the white churches Mr. DuBois says little except to bear out his theory that the races cannot get along together in the same church. Of the methods employed by religious carpetbaggers from 1865 to 1870 to force all negroes to leave the Southern white churches, he makes no mention. In reality it was equivalent to martyrdom for a negro to remain faithful to his master's church. The persecution of the Colored Methodist Episcopal Church, consisting of the negroes who tried to remain with the whites, but who yet for their safety had to be organized separately, shows the kind of pressure brought to bear by aliens and by blacks under their control in order to draw the race line in the churches.

Mr. Du Bois's theories and opinions may be correct; they are certainly worthy of attention; but they are not well supported by any known facts, nor by the mass of valuable material here collected by himself and his fellow workers. Indeed the effect of the intermingling of facts and theories in this monograph is somewhat confusing and contradictory.

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The Return to Protection. By WILLIAM SMART. London, Macmillan and Company, Ltd., 1904. — 284 pp.

Fifty Years of Progress and the New Fiscal Policy. By LORD BRASSEY. London, New York and Bombay, Longmans, Green & Company, 1904. — 111 pp.

Protection in Germany. By W. HARBUTT DAWSON. London, P. S. King & Company, 1904. — 259 pp.

Protection in Canada and Australasia. By C. H. CHOMLEY. London, P. S. King & Son, 1904. — 195 pp.

Protection in the United States. By A. MAURICE LOW. London, P. S. King & Son, 1904. — 167 pp.

Die Eisenbahntarife in ihren Beziehungen zur Handelspolitik. Von DR. ERNST SEIDLER und ALEXANDER FREUD. Leipzig, Duncker und Humblot, 1904. — 189 pp.

The books called into being by Mr. Chamberlain's proposed change in the fiscal policy of Great Britain already make a respectable library; and there is as yet no sign of a lessening output. Of the works on this subject published in the current year, perhaps the most important, and certainly the most readable, is Professor Smart's *Return to Protection.* It is designed to meet the needs of readers of inteiligence and common sense who are not familiar with the technical terms of economics or with even the better known principles of trade and industry. Accordingly the work is practically an elementary treatise on international trade, with special reference to the fiscal problem. As such it has scarcely an equal; and it is to be hoped that it may find a wide circulation in this country as well as in Great Britain.

Professor Smart is uncompromising in his advocacy of free trade as the only satisfactory policy for the United Kingdom of to-day. He emphasizes the fact that for a free-trade country to go over to a protectionistic basis involves no less of painful readjustment than is involved in a change from protection to free trade. But quite apart from the difficulties of readjustment, he is inclined to deny the validity of the familiar arguments for protection. A scientific system of protection involves endless theoretical difficulties. Political exigencies would make impossible the adoption of such a system, if an omniscient theorist should arise to construct it. Retaliatory tariffs he considers more dangerous to the country which employs them than to the coun-

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tries against which they are directed. Finally, the author inquires into the alleged decline of Great Britain and demonstrates it to be a myth, and examines the advantages of an imperial customs union, which prove to be insignificant, if not quite illusory.

Lord Brassey's *Fifty Years of Progress* covers much the same ground and takes the same point of view. But while Smart is persuasive, Lord Brassey is dogmatic. Smart's style is lively and entertaining; Brassey's is meagre, disjointed, at times tedious. As an expression of the views of a man of affairs and a scholar, Lord Brassey's little book will be read with interest.

Protection in Germany, *Protection in Canada and Australasia*, and *Protection in the United States* are three of a series of popular works upon protection in various countries, published with a view to throwing light upon the British fiscal problem. Mr. Dawson's narrative of the events that led to the inauguration of an imperial protective policy in Germany is very instructive. A policy which began with the wholly reasonable purpose of providing the Empire with independent revenues has gradually and irresistibly degenerated into a mere vulgar protection of selfish interests because these interests happen to hold a strategic position which makes it possible for them to enforce their demands. At present they demand virtually a guarantee of interest on capital and rent of land. In order to preserve the great landowner from ruin, which would often be but the just due of his incompetence, every laborer of the kingdom is compelled to eat dear bread and meat — if not to dispense altogether with the latter. In a comparison of the relative conditions of the British and the German laborers, the author attempts to show how far protection has injured the latter. It is somewhat amusing to find this fallacious comparison of incomparables, which in our own country has done such good service for protection, marshalled among the arguments for free trade.

It may not be amiss to call attention to a few errors that escaped the author's revision. On page 4 he speaks as though discrimination in favor of importation of raw materials were an innovation upon mercantilistic policy. On page 19 he represents the Customs Union, consisting of eighteen states, among them Prussia, as comprising an area of only 7,719 square miles. The statement on page 97 that cost of living has increased does not seem to be in harmony with the description in the same chapter of a universal fall in prices. On page 150 it is stated that the cotton spinners wanted low duties on yarn while the weavers wanted high duties — an example of altruism, if the statement is correct, without parallel in the annals of protection.

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Mr. Chomley's brief study of protection in Canada will be of interest to both American and English readers, since influential political parties in each country seek to enter upon closer commercial relations with Canada. In spite of his free-trade bias, Mr. Chomley admits that Canada is now committed to the policy of protection to infant industries, and will hardly be induced to enter upon policies of preferential treatment or reciprocity which would reduce substantially the duties on manufactures. In his discussion of protection in Australasia Mr. Chomley comes to similar conclusions. Australasia does not choose to let England do her manufacturing. Whether the protective policy of the Australasian colonies has been to their advantage or not it would be impossible to say. The author questions the advantages of protection in these colonies, and ascribes the continuance of the policy, in some of them at least, to the accidental fact that the advocates of free trade have been largely conservatives and hence have failed to secure the support of the powerful laboring class.

Mr. Low's *Protection in the United States* consists of a brief historical sketch of the evolution of the American system, and a somewhat elaborate statement of the theoretical basis of protection, as the author views it. The first part may be dismissed with a few words. Students of protection are gradually coming to doubt the possibility of any historical proof of the expediency or inexpediency of a protective system. In American economic history, at any rate, so many powerful influences have been operating simultaneously that to isolate one and measure its effect is impossible. Of this Mr. Low is aware, yet he continually implies that depression or prosperity in a given period is directly traceable to fiscal policy — except when prosperity attended the low tariff of 1842. For this prosperity Mr. Low seeks other causes, since he is an avowed protectionist.

There is need for a clear and simple restatement of the case for protection; but one who seeks to find it in Mr. Low's book will be disappointed. The author has collected all the arguments he can find for protection, whether in Republican campaign literature or in the works of List or Patten, and he adopts them all uncritically. Accordingly it is not surprising that some of his arguments are incompatible with others. Thus, for example, he holds that permanent protection alone can enable the American manufacturer to meet the cost of high wages; yet he lays down the "axiom" that high wages always represent low labor-cost — that American labor at $1.50 a day is cheaper than Indian labor at 12½ cents. He admits that the tariff raises prices, yet he apparently believes that the foreigner "pays the tax." He is,

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moreover, extremely infelicitous in his choice of statistical proofs. Thus on page 60, in order to create a presumption that the tariff raises wages, he gives a table comparing wages in England and the United States in fifteen trades. Without exception, the trades are such as gain nothing whatever from the tariff, *e.g.*, carpenters, upholsterers, compositors. On page 85 he attempts by a comparison of maximum prices in New York and London to disprove the assertion that prices are raised by the duty. If the commodities had been correctly selected, *i.e.*, if they had been commodities which are normally imported into the United States, any statistician would nevertheless reject at once deductions based upon maximum, not average prices. But the commodities selected are flour, bacon, hams, butter, beef and eggs, all of which we export — indeed in four of the cases, the London prices are for American products. And this is his sole proof that the tariff does not raise prices! Clearly nothing more is needed to show that the author is not equal to the task he has undertaken.

The little work on *Die Eisenbahntarife*, will serve to bring home to us the truth that American protectionists are raw apprentices in the art of customs exactions, as compared with the protectionists of the continent of Europe. The two cardinal points of a properly developed commercial policy are the exclusion of the foreigner from one's own market and the intrusion of one's goods into the foreigner's market. The first is easy; the second requires genius; and in it our science is *nil*. So skilful have the continental diplomatists become in getting the better of each other by the ordinary methods of customs wars that further gain to any nation requires the development of a new arm; and this our author finds in the manipulation of freight rates. If the importer succeeds in scaling the customs wall, we should clap such high rates upon his goods that he will be unable to carry them far from the frontier. We should reduce export charges, until national produce can compete even in protected foreign markets. If another nation uses our railways to reach a neutral market, we should discriminate against its goods. Canadian goods bonded through to England should be burdened as heavily as possible, since thereby we would check the development of a competitor. True, our railways would lose freight, but "we have passed beyond the naïve view-point which regards private interests as paramount."

So much for the ideal. The author is grieved to confess that as yet railway policy is in the main tainted by free-trade principles. True, most continental states give reduced rates on the national roads to export products. Many of them, notably Italy and Hungary, through

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reduction of rates for special towns in which foreign goods are not normally reloaded, and the maintenance of high general rates to which all goods of foreign origin are subjected, manage to grant a measure of surreptitious protection to the domestic producer. Low rates are charged from the center toward the frontier, high rates in the reverse direction. Low rates are sometimes granted to goods brought to specific stations by wagon road or private track. To enjoy these rates, through freight would have to be unloaded, hauled into the country and back again to the station. Clearly, here is a vast field for the exercise of ingenuity. Our author confidently promises such developments for the future. And this suggests, perhaps, a new possibility which should be considered by those who advocate nationalization of railways as a cure for the evil of discriminations. How long would it be before our national railroads would be captured by the protectionists? In such an event, it is easy to foresee an endless array of vexatious discriminations, successfully defended on the ground of patriotism.

ALVIN S. JOHNSON.

Methods of Industrial Peace. By NICHOLAS P. GILMAN. Boston, Houghton, Mifflin & Co., 1904. — 436 pp.

In view of the work which the National Civic Federation is attempting to do, and is doing, in promoting industrial peace, and of the aroused public interest in this subject since the anthracite coal strike of 1902, Mr. Gilman's latest book is an exceedingly timely one. It is not only timely, it is of permanent value as a contribution both to economic science and social policy. Those who are familiar with his earlier books on *Profit Sharing* and *A Dividend to Labor* will find in this work the same careful thoroughness, impartiality of statement and saneness of view which characterized them, — and something too of the same optimism. Mr. Gilman holds a brief for neither labor nor capital, but rather for the oft-forgotten third party in all labor controversies — the public. The purpose of his book is not so much to describe the conditions of peaceful industry as the methods whereby an interruption of these conditions may be prevented.

"Peace," says Mr. Gilman, "reigns in industry when the two parties are for the time fairly well satisfied with the *status quo*." A single chapter is devoted to a description of the industrial position of the two parties and to the associative character of modern industry. Two chapters describe the combinations of employees and employers, while the next thirteen present the various methods of securing or maintain-

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ing industrial peace. The *sine qua non* is collective bargaining, but that alone is not enough; a collective bargain pure and simple should be supplemented by provisions in the agreement that all disputes regarding the interpretation of the agreement shall be referred to an arbitrator for final decision.

But even this offers no absolute guarantee of industrial peace. A more vital question at present is that of the best means to employ for holding both parties to strict obedience to the joint agreements which they have made. This Mr. Gilman believes is to be found in the legal incorporation of trade-unions. The present unwillingness of unions to become incorporated he criticises as "illogical and immoral." Such a criticism, however, will not be accepted by all students of the labor problem. In the first place it assumes too easily all lack of hostility toward unions on the part of employers. While it is true, too, that the Taff Vale decision in England, which is given at length, has probably not diminished the real strength of the unions there, it is certain that the union movement has not the same solidity or power in this country as in England. Moreover the evidence on this point before the Industrial Commission made it quite clear that the unions were acting on the advice of their attorneys in refusing to be incorporated. Nor would incorporation alone solve the problem of industrial peace.

Mr. Gilman, however, is ready to go much further than this. "The time is ripe," he says, "for emphatic assertion of the rights of the public. If the employer and the trade-union will not settle labor difficulties speedily and peaceably, then the public must and will find a more effectual way." Conciliation and arbitration are warmly advocated, but failing these the author leans strongly to the use of the New Zealand system of legal regulation, improperly known as "compulsory arbitration."

There is something of the missionary spirit in all that Mr. Gilman writes, and the hope is expressed in the preface of the present volume that it may "assist the practice of those who have the task laid upon them of settling labor disputes." But this very fact gives it a warm, generous quality, without detracting in the slightest from its scientific character. It is careful, calm and unbiased, and is unquestionably the best book on the subject with which it deals.

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Special Report of the General Assembly (of Vermont), 1902, relating to Taxation of Corporations and Individuals. By the Commissioner of State Taxes. Burlington, 1902. — 134 pp.

Preliminary and Final Report of the West Virginia State Taxation Commission, 1902. Charleston. — 78 pp.

Report of the Tax Commission of Minnesota created by Chapter 13, General Laws of 1901, for the purpose of Framing a Tax Code. St. Paul, 1902. — 223 pp.

Report of the State Tax Commission of Missouri, 1903. Jefferson City. — 35 pp.

Second Report of the Board of State Tax Commissioners of Michigan. Lansing, 1903. — 312 pp.

Second Biennial Report of the Wisconsin State Tax Commission, Madison, 1903. — 377 pp.

The two years that have elapsed since the last review in the POLITICAL SCIENCE QUARTERLY, Volume xvii, page 177, have seen no falling off in the interest devoted to the problems of practical tax reform. Among the more prominent state reports, the six following deserve some mention.

The Vermont report confines its attention to the discussion of corporations and the grand list. The volume contains a concise history of the tax on each kind of corporation, with detailed statistics as to the present situation and recommendations as to desirable changes. Among such changes are the introduction of a progressive rate into the earnings tax on railways, the inclusion of gas, electric lighting and power companies under the taxable corporations, and minor suggestions with reference to banks and insurance companies. In the main, however, the commission finds the Vermont laws on this subject fairly adequate. On the other hand, the grand list is declared to be in a very unsatisfactory condition. It is made up from the sworn statement of the taxpayer touching his personal estate as well as from the quadrennial appraisal of real estate. The commission tells us that it is a well known fact that the grand list does not represent by any means the true cash value of either the real or the personal property. This statement is followed by the usual anticlimax of the recommendation of a board

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of equalization as a remedy. It is evident from the report that the economic conditions in Vermont are not yet those of a developed industrial state, for the commission would otherwise not set forth as a panacea what has been found to be so inadequate in other commonwealths.

The West Virginia report is a far more comprehensive and thoroughgoing piece of work. The preliminary report was discussed in the POLITICAL SCIENCE QUARTERLY, volume xvii, page 177, to which the reader may be referred. The final report presents the conclusions as formed after an interval of further discussion and deliberation. Here, as in the original report, the influence of the Buffalo Tax Conference is plainly visible. The commission still maintains that by all means the best plan is to abandon the attempt to assess intangible personal property. It confesses, however, that under the West Virginia constitution as it stands, this plan is impracticable. While waiting for such an amendment, the commission recommends that at all events the system of deduction for debts be extended to intangible personalty. Moreover, mortgages should also be freed from taxation. The recommendation of the separation of state and local sources of revenue is repeated and strengthened, and it is suggested that the state revenue be derived from increased corporation taxes as well as from licenses to dealers in liquors, tobacco and coal.

The Minnesota commission repeats the familiar facts with reference to the taxation of personalty. After speaking of real estate, they add: "passing to the assessment of personal property, we enter a field of confusion worse confounded." They tell us that the existing facts form a "deplorable condition of affairs." Their recommendation is the customary proposal of the listing system, to be verified by law. That the commission, however, is only half-hearted in its recommendation is seen by the following significant conclusion:

> It may here be said that if it shall be proven by experience under the bill that the enforcement of its provisions is inadequate to produce results far more satisfactory than any the state has ever yet known, the sooner the taxation of many classes of personal property is abandoned, the better.

As to which alternative is to be the one ultimately chosen there is perhaps not much doubt. The taxation of corporations on the other hand in Minnesota seems to be in fairly satisfactory condition. At all events, the commission makes no startlingly new recommendations. As regards other points the report recommends the separation of state and

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local revenues and has something to say about an inheritance tax. The one striking proposal in the report is the suggestion of an income tax — striking because the present reviewer is quoted at some length in a passage which is misinterpreted into affording a basis for the scheme of the commission.

Missouri has also gotten into line, but the report of the commission is a modest one. No one, it tells us, who has given any thought to the complex principles of taxation, will expect a discussion here of the various theories advanced. The commission states that the revenue laws of Missouri in their main provisions compare favorably with those of other states. It thereupon proceeds to explain the shortcomings of the Missouri system. The defects of the general property tax it thinks may be corrected by requiring the assessor to put into separate columns the actual and the taxable values. If, however, this does not accomplish the results anticipated, "it certainly can be no worse in practice than the system now in vogue." The present system is so bad, we are told, that any attempt to present statistics on the subject would be useless. Missouri, also, it is clear, has not quite reached the point where it is ready to face the real difficulties of the problem.

At the time that the permanent tax commissions of Michigan and Wisconsin were instituted, attention was called to the significance of the action. The second biennial reports have now been published and are quite up to the level of the first.

The Michigan report gives a general review of the activity of the commission, and then devotes its discussions chiefly to two topics. The first is the Ward-Lowrey or mortgage tax bill. This was an attempt to introduce the Massachusetts and California system but was vetoed by the governor. The special reasons for this action, which really do not go to the heart of the subject, are well set forth in the report. The other discussion is that pertaining to the taxation of railways, under the Cooley and Adams system, which is now familiar to all students, and which is being at present so actively contested in the courts. The volume contains many statistical tables, and will be of interest to those who wish to keep abreast of the latest developments.

The Wisconsin report is divided into a number of carefully elaborated chapters including such subjects as the inheritance tax, the taxation of credits in general, and the assessment of railways and banks. Some of these discussions go quite fully into the theory of the subject, and are provided with copious references to the court decisions, so that they will be found of permanent value. The report is also noteworthy in that it contains for the first time in any American state document chap-

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ters on the state budget and on municipal taxation, including the whole subject of municipal accounting.

It would be a great gain to the cause of tax reform in the United States if more states were to follow the examples of Michigan and Wisconsin in forming permanent tax commissions. Their discussions are far and away superior to those published by temporary bodies, composed of men who commonly approach the subject for the first time.

EDWIN R. A. SELIGMAN.

Der Lübecker Schoss bis zur Reformationszeit. VON DR. J. HARTWIG. *Staats- und socialwissenschaftlichen Forschungen.* Band xxi, Heft 6. Herausgegeben von Gustav Schmoller. Leipzig: Duncker & Humblot, 1903.— 8vo, xiv, 237 pp.

This study constitutes the one-hundredth number in Schmoller's *Staats- und socialwissenschaftlichen Forschungen* and is on that account honored with a charming little preface by Professor Schmoller himself, in which he recounts the history of this long series of publications. Writing on Palm Sunday, April 5, 1903, Professor Schmoller reviews the growth of this one of the several great monuments of his own life work. He tells how on August 30, 1876, he and G. F. Knapp made a contract with Duncker and Humblot for the publication of this series, the purpose of which was to facilitate the publication of the scientific studies made by their own pupils. The first five numbers were not published, however, until two years later, in 1878, and now, after five and twenty years, the one-hundredth number has come from the press. Before the first number appeared, Knapp had been called to Strassburg and his name was dropped as co-editor, the series appearing, as it has ever since, under Schmoller's name alone. Of the one hundred publications, all but twenty-seven, he tells us, are the work of his own pupils. Few of the studies in this series are devoted to questions of the day because of his feeling that beginners are not competent to handle such subjects. Fewer still are devoted to questions of economic theory, not for the reason which Schmoller's opponents might attribute to him, namely, that he does not value that line of work, but rather because, as he puts it, he holds it too high. Beginners' impressions and speculations in the field of economic theory appear to him, he says, "for the most part unripe, not new or significant enough to be taken up in such a series." In consequence, most of the studies are strictly in keeping with the original character of the work of the historical school of economists. Thirty-three numbers are the work of men who are now or have been professors or

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teachers of political science or history, and many of these were their first works. Some of these men are now occupying conspicuous positions in the world of scholarship. Many have already died. One of them closed his life as a cabinet minister, many are in the official service of the empire, and the great majority of them are in other conspicuous positions.

Schmoller's own share in the work has been large, for in many cases he has set the author his theme and followed through the entire development of the work, even at the end going so far as to create "wounds which healed but slowly" by ruthlessly cutting out from the finished work what the budding authors considered their "pearls." Nevertheless he reports that he finds himself still bound by ties of friendship and common interest to most of them. With this number of the studies, Schmoller turns over the further conduct of the series to Professor Max Sering, Number 101 being promised under the names of Schmoller and Sering.

Dr. Hartwig's study of the ancient city tax of Lübeck is, like many of the preceding studies in Schmoller's *Forschungen*, a careful piece of historical investigation. He found rich sources in the ancient records of the city and has brought together a large amount of material in the official publications and from other sources. Established in the twelfth century, this ancient city tax shows an unbroken development of over six hundred years. It therefore affords the material for a study thoroughly typical of the historical school.

The fact that the tax came to be spoken of as *the* Lübeck tax emphasizes the unity of its development. It had, indeed, an almost typical growth, beginning like all direct taxes as an irregular, more or less voluntary contribution under the name of "*collecta*" (*Bede*), made only upon extraordinary occasions. In its original form it was a purely personal tax bound up with the rights, privileges and duties of the citizen. The original obligations resting upon the Lübecker citizen were "*schoten, waken, wepenere utmaken*," that is, to pay scot, to keep watch and to bear arms. Among these, the chief obligation was the scot and this became by degrees the distinctive mark of the Lübecker burgher. In the beginning it was a tax upon the possessors of land or houses within the domain of the city. Persons not householders or landholders seem to have been exempt. It was, in short, a tax upon those who, like the landholding merchants, enjoyed a monopoly of burgher rights. Whoever did not possess an unincumbered property in land or house did not, as such, possess any rights in the city; he stood outside of its franchises and, in consequence was free of taxation.

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One of the interesting idiosyncrasies of the development was the introduction of other than physical persons as taxpayers, the property-holding guilds being subject to the tax. In the beginning landed property was the sole basis for the apportionment but, as the practice of renting city lands and houses grew up, this afforded a new basis upon which the tax might be apportioned, and personal or movable property soon came to be included.

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Bank Rate and the Money Market in England, France, Germany, Holland and Belgium, 1844–1900. By R. H. INGLIS PALGRAVE, F.R.S. New York, E. P. Dutton & Company, 1903. — xxiii, 237 pp.

Too much can hardly be said in praise of the studies of Mr. R. H. Inglis Palgrave with respect to the bank rate and the money market, covering the long period of sixty-six years, 1844-1900. The basis for the study has been the actual statistics, week by week, which the author has worked out in the form of yearly averages, but on account of "the doubt that this [presentation] would have been too cumbersome for the general reader" the results have been presented in ten-year averages. That the tables would have been cumbersome is probable, but the value of such tables, presented in concise form, furnishing the actual data week by week and better, day by day, have in themselves a value that compensates so trifling a disadvantage. It is a fact often lost sight of by investigators that as time passes methods of analysis, once accepted, are discarded, and results founded on inferences may be reasoned otherwise, but the actual data have forever the value of the truth for which they stand. Could Mr. Palgrave be persuaded to publish this raw statistical material it would form a supplementary volume of the greatest value.

The large deposits of "bankers' balances" in the Bank of England and the working of the "one reserve system" furnishes an interesting parallel to the deposits of the "out-of-town banks" and trust companies with the associated banks at New York. Despite the apparent solidity of a ratio of reserves to liability of forty-three per cent for such a year as 1875, after deducting the bankers' balances, *i.e.* redeposits by other banks, the ratio falls to six per cent and in 1866 to three per cent. Critics of American banking methods can hardly find a favorable vantage ground of comparison in the statistics of the Bank of England. Mr. Palgrave urges greater publicity with respect to the element of bankers' balances, and very justly, inasmuch as since 1877

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no figures of the amounts of bankers' balances have been given out, although the amount of these deposits are known to have greatly increased. The deductions of the author from his investigations are to the end that security should be increased. At the same time, the author shows that the bankers' balances do not constitute an element of weakness in times of panic as do the redeposits of surplus currency by the out-of-town banks at New York.

For students interested in data bearing on interest, the book will be a mine of information, although the same drawback is experienced that has been previously mentioned in the case of bank statistics. It is impossible to get at the raw material, because the tables destroy the element of sequence and the average method destroys the element of fluctuation. It is not satisfying to be told that in 1857 the interest rate for the Bank of France stood at 5 per cent for 2 days, 6 per cent 188 days, 7 per cent 12 days, 8 per cent 9 days and 9 per cent 16 days. It is the location of these days in the year and the order and violence of the fluctuation which are the essential facts, either in continuous statistical comparison or in problems of variation and correlation. This defect in Mr. Palgrave's otherwise splendid study in finance is here overemphasized in the hope that investigators will in the future furnish their material "as it is and as it occurs," raw and uninteresting as it may seem; for where the material is withheld, it is impossible to verify the conclusions. In addition, the records may become the beginning of new investigations and scientific labor may become cumulative in place of being endlessly renewed.

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RECORD OF POLITICAL EVENTS.

[From May 1, 1904, to November 8, 1904.]

I. INTERNATIONAL RELATIONS.

THE RUSSO-JAPANESE WAR: MILITARY OPERATIONS — Soon after the defeat of the Russians on the Yalu, May 1, by the first Japanese army under General Kuroki (see last RECORD, p. 333), two other Japanese armies were dispatched to Manchuria. The second army, commanded by General Oku, landed on the Liaotung peninsula at a point north of Port Arthur, and defeated the Russians, first at Kinchau, and later in a sanguinary battle lasting five days at Nanshan hill, a part of the outer line of defenses of Port Arthur. This army then turned northward, driving the Russians before it and defeating them with heavy loss in the battle of Vafangow and capturing Kaiping in July. The third Japanese army, commanded by General Nodzu, landed at Takushan on the Korean gulf, defeated the Russians after a seven hours' battle at Sinyen on June 10 and continued its march northwest toward Liaoyang, where a Russian army estimated at 125,000 or 150,000 men was stationed. — On May 30 the Russians evacuated Dalny, after destroying its extensive docks, piers, warehouses and barracks. In the latter part of June the Japanese under command of General Nogi began the regular **siege of Port Arthur**. The Russian fleet within the harbor was bottled up not so much by the sinking of a number of stone-laden vessels in the outer harbor (an operation by which the channel was only partially obstructed) as by the Japanese blockade outside. During the month of July the Japanese lines were drawn closer about the city, several outposts being captured. From time to time, beginning in the latter part of July, the Japanese fleet bombarded the city, and desperate assaults were made from the land side, all of which were repulsed by the Russians, commanded by General Stoessel. — On August 10 the Russian fleet consisting of twenty-four vessels made a desperate but unsuccessful attempt to escape from the harbor of Port Arthur and join the Vladivostock squadron. Admiral Wittsoeft and a large part of the crew of his flagship were killed and several of the Russian vessels were seriously injured. The "Czarevitch" escaped to the neutral harbor of Tsinchau where it was dismantled and laid up for the rest of the war. The "Askold" and the "Groszovoi" reached Shanghai only to be similarly treated. The "Novik" took refuge in the harbor of Saghalien but was forced to leave and was destroyed by two Japanese cruisers. The "Ryeshitelni," having reached the harbor of Chifu was towed out by Japanese cruisers (see below, INTERNATIONAL INCIDENTS). The remaining vessels of the fleet returned badly damaged to Port Arthur. — Shortly after the disaster to the Port Arthur fleet the **Vladivostock squadron** was attacked by ad-

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miral Kamimura in the strait of Korea off Tsu Island. The "Rurik" was sunk and the other vessels of the squadron were disabled. In addition to the cases here noted, other Russian vessels were crippled or laid up in neutral harbors, and Russia's naval force in the East was reduced to insignificance. — A formal demand was made early in August for the surrender of Port Arthur, but the terms offered were promptly rejected. At the close of the period under review the beleaguered force, largely diminished in numbers and living on reduced rations, was still holding out against the attacks of the Japanese. — Meantime the **Japanese advance into Manchuria**, although obstinately contested, proceeded with uniform success. On July 20 Field Marshal Oyama assumed command of all the Japanese armies in the field, and under his direction the divisions of Kuroki, Oku and Nodzu moved along converging lines toward the important town of Liaoyang which the Russians had strongly fortified. In this advance movement the Russians were defeated successively at Motien Pass, Kiaotung, at Tatchekiao, at Yangste Pass (where on July 29 one of their generals, Count Keller, was killed), at Simancheng, at Huicheng and at Anshanshan. Before the Japanese advance the Russians retreated northward to the environs of Liaoyang where their forces under General Kuropatkin were concentrated in the form of a semicircle south of the town. Upon this line the three Japanese armies converged and during the first week in September a series of battles were fought which, in view of the numbers engaged (the aggregate forces were variously estimated at from 400,000 to 500,000 men), are ranked among the greatest battles of modern times. The Russians were defeated with enormous losses and retreated across the Taitse river, and later toward Mukden, about sixty miles north of Liaoyang. — Kuropatkin's retreat was conducted with skill and General Kuroki's efforts to turn the Russian left flank were unsuccessful. — On October 2, General Kuropatkin gave orders for a forward movement, and on October 11 the Russian advance met the Japanese near Yentai, about twenty-five miles north of Liaoyang. A series of sanguinary battles occurred during the week following. The right and left wings of the Japanese army were commanded by Generals Kuroki and Oku respectively, while General Nodzu held the center. General Kuropatkin's forces were driven back with losses admittedly in excess of 35,000. According to Field Marshal Oyama's report, over 13,000 Russians were left dead upon the field. The Japanese losses, according to the same report were less than 15,000. — About the middle of October, the Russian Baltic fleet started on its long planned but repeatedly postponed voyage to the East. (See INTERNATIONAL INCIDENTS, below.)

RUSSO-JAPANESE WAR: INTERNATIONAL INCIDENTS. — Russia's disregard of the rights of neutrals on the high seas led to remonstrances on the part of Great Britain and the United States and provoked general criticism of Russian policy. Soon after the outbreak of

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hostilities the Russian government announced that it would treat all kinds of fuel, such as coal, naphtha and alcohol, as **contraband**, and later it added cotton to the list. On June 10, Mr. Hay, Secretary of State of the United States, sent a circular to the American ambassadors in Europe, dissenting from the Russian position that these articles might be treated as absolute contraband. The Russian order also classed as contraband "everything intended for warfare on land or sea," including foodstuffs. The language was ambiguous, but the intent became clear when the Russian government communicated to the American ambassador at St. Petersburg a decision of the prize court at Vladivostock, in the case of some American flour that was seized on the German steamship "Arabia," that the flour was contraband because it was bound to Japanese ports and addressed to commercial houses there. Against this decision, which was apparently approved by the Russian government and by which an attempt was made to throw foodstuffs into the category of absolute contraband by requiring the owner to make impossible proof that no part of the cargo might eventually come to the hands of the enemy's forces, both the United States and Great Britain strongly remonstrated. Writing on August 30 to the American ambassador at St. Petersburg, Mr. Hay declared that the Russian contention, if fully carried out, would mean "the complete destruction of all neutral commerce with the non-combatant population of Japan." The remonstrances of the British and American governments were referred by the Czar to a commission representing various ministries at St. Petersburg, and toward the end of September it was announced that the Russian government had decided to place foodstuffs in the list of conditional contraband, but that it still adhered to its original position with regard to coal. At the same time the Russian government formally remonstrated against the course of the British government in permitting wholesale trade in contraband between England and Japan. Serious protests were, on the other hand, called forth by seizures of British and German merchant ships by the **Russian auxiliary cruisers** "Smolensk" and "St. Petersburg," belonging to the Russian volunteer fleet. These cruisers, disguised as merchantmen, sailed through the Dardanelles from the Black Sea early in July and at once began to search and detain neutral vessels. The German steamship "Prinz Heinrich," with the imperial mails, was stopped on July 13, and on July 16 the British steamship "Malacca," laden with government supplies, including arms and ammunition for the British arsenal at Hongkong, was captured. The mails taken from the "Prinz Heinrich" were after a brief detention restored. The "Malacca" was sent through the Suez Canal, in charge of a prize crew, for a port on the Baltic. The British government protested against the seizure, and public indignation reached a high pitch. The Russian government sought to justify the capture by alleging the suspicious character of the cargo and the refusal of the captain of the "Malacca" to show his manifest; but the British government insisted that the

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government stamp with which the cargo was marked sufficiently established its innocent character. The British government also maintained that the auxiliary cruisers in question, since they passed the Dardanelles as merchant vessels and could not without a violation of the treaty of Paris have passed as men-of-war, were not entitled to exercise the belligerent right of visit and search at sea. The Russian government released the "Malacca" and gave an assurance against the recurrence of similar incidents. The "Smolensk" seized also the British ship "Ardova," which had on board a quantity of supplies shipped by the American War Department to Manila, but the prompt release of the vessel rendered any action by the United States unnecessary. The sinking on July 25, by the Vladivostock squadron, of the "Knight Commander," a British merchantman laden with a miscellaneous cargo for Chinese and Japanese ports, gave rise to further animated controversy. The Russian government alleged that a part of the cargo consisted of bridge and railway materials for the use of the Japanese army, and excused the sinking of the vessel on the ground that it was deemed extremely difficult to take her into port for adjudication. The prize court at Vladivostock, on submission of the steamer's papers, promptly adjudged her lawful prize. The British government, however, strongly protested against the claim of the right to destroy neutral ships in advance of the decision of a prize court, and the act of the Russian commander was vigorously denounced in Parliament. The Russian government eventually acceded to the British demand for reparation. A more serious controversy was raised by the performances of the **Russian Baltic squadron** at the beginning of its Eastward voyage. Alarmed by rumors that Japanese agents had been surreptitiously preparing to attack this squadron in the North Sea with torpedoes or floating mines, the Russian officers apparently adopted the policy of opening fire upon any vessel which appeared to them suspicious. In passing through the Skagerack a Russian cruiser fired upon a Swedish steamer and on October 21 a German fishing vessel was similarly attacked. During the following night the Russian squadron encountered a fleet of British fishing steamers, sank one of them and riddled others, killing two men. According to the report of the Russian Admiral Rojestvensky, transmitted October 27 from Vigo, Spain, his squadron was attacked, while passing through the fishing fleet, by two torpedo boats, one of which it sank, and the injury to the British fishing steamers was a regrettable but inevitable incident of which the Russian officers were unaware. This explanation was received in Great Britain with general incredulity. In the meantime the Russian government expressed its profound regret and promised liberal compensation, but refused to give any pledge that the officers responsible for the occurrence should be punished. British feeling, already aroused by Russian interference with neutral commerce, ran high; satisfaction and assurances against future outrages were generally demanded; active naval preparations were made, and war was appre-

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hended. On October 28, however, it was agreed that the Russian vessels concerned in the incident should be detained at Vigo until the Russian naval authorities should ascertain what officers were responsible; that such officers and other material witnesses should not proceed on the voyage to the East; and that an inquiry into the facts should be instituted by an international commission, as provided by the Hague Convention. At the same time the Russian government undertook to guard against a recurrence of such incidents. — Much adverse criticism was called forth in neutral countries by the action of Russia in announcing an intention to treat as spies all persons engaged in using wireless telegraphy for the purpose of sending information as to military events from within the field of military operations. No formal protests appear to have been made by neutral governments, although the Russian ambassador at Washington was informed that the United States reserved the right to watch over the persons and property of its citizens and that any interference with their rights would be a subject for inquiry. Much discussion also took place in the press as to certain floating mines found at sea off the Manchurian coast, but the origin of the mines was not definitely established. — Much apprehension has at times been excited by the apparent disposition of both belligerents to disregard the **neutrality of the Chinese empire**. Apart from the fact that the war itself is carried on chiefly on Chinese territory, precisely as if that territory were the subject-matter of the conflict, Chinese neutrality has not in other respects been scrupulously respected. On August 10, a Japanese vessel-of-war entered the harbor of Chifu and captured and carried away the Russian destroyer "Ryeshitelni" which had taken refuge there and which, as the Russians alleged, had assented to a Chinese demand for disarmament. The Russian government formally protested to the powers against the action of the Japanese as a flagrant violation of international law. The Japanese defended their action on the ground of Russia's alleged violation of China's neutrality and China's inability to enforce it. Other Russian war vessels seeking refuge in Chinese ports were (as noted above) dismantled; and the same course was pursued in regard to Russian war vessels in the German port of Kiaochau. On September 14 the Russian auxiliary cruiser "Lena," of the Vladivostock squadron, put in at San Francisco. An examination by officers of the United States having demonstrated that she was unable to leave without obtaining practically a new outfit of machinery, the President ordered her to be disarmed and exacted from her commander a guarantee that no attempt would be made to take her out of port before the conclusion of peace. — Charges and countercharges have been made by both belligerents of the violation of Red Cross signals.

JAPAN AND KOREA. — The protocol signed in February, 1904 (see last RECORD, p. 332), was followed by the conclusion of a treaty on August 22, by which it is provided that the Korean government shall engage as

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its financial adviser a Japanese subject recommended by the Japanese government, and shall take action on financial matters only after his counsel has been given; that it shall engage as a diplomatic adviser a foreigner recommended by the Japanese government, and shall take action only after his advice has been given; and that the Korean government shall previously consult the government of Japan in concluding treaties and conventions with foreign powers and in dealing with other important diplomatic affairs. In accordance with this agreement, Durham White Stevens, an American, was appointed diplomatic adviser to the Korean government. In accordance with the protocol of February 23 the Japanese government demanded the introduction of extensive reforms in the government of Korea, the most important of which are the enforcement of the principle of ministerial responsibility and the reorganization of the national finances. To aid in the rehabilitation of the finances Japan agreed to lend the Korean government 3,000,000 yen. The Japanese government undertook also to represent Korean interests in foreign lands, and Korean diplomatic and consular representatives abroad were withdrawn. One of the first results of Japanese control over Korean foreign relations was a decree issued in May by the Korean government revoking the timber concessions on the Yalu and Tumen rivers granted to Russia in 1896.

THIBET. — In September the British "mission" to Thibet (see last RECORD, p. 333) was carried to a successful completion with no outside interference except a diplomatic protest from Russia. After leaving Geru (see last RECORD, p. 334) the British force advanced to Gyantse where it was bombarded by the Thibetans. On July 6 Gyantse was taken by storm after severe fighting. From thence the expedition proceeded to Kharola Pass, where two battles were fought and the Thibetans routed. In the meantime Colonel Younghusband had sent a letter to the Thibetan authorities demanding that they send representatives to Gyantse for the purpose of treating. The letter being returned unopened the expedition resumed its march toward Lhassa and entered that city August 7, after eight months of marching and fighting. On September 7 Colonel Younghusband signed a treaty with the representatives of the Dalai Lama who had himself fled from Lhassa. The treaty provides for a rectification of the boundary between India and Thibet; requires the Thibetans to establish three marts for mutual trading and to pay an indemnity of £500,000; prohibits the erection of customs stations on the frontier and the collection of customs on British exports to Thibet; requires the demolition of all forts on the frontier between Gyantse and the Indian frontier; provides for the temporary occupation of the Chumbi valley by British troops, and stipulates that without the consent of Great Britain no Thibetan territory shall be sold, leased or mortgaged to any foreign power, and that no foreign power shall be permitted to concern itself with the administration of the government of Thibet nor to send

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official or non-official persons to Thibet to assist in the conduct of Thibetan affairs nor to construct roads or telegraphs or open mines in Thibet. Against this treaty the Russian government made protest, claiming that the action of Great Britain was a violation of specific assurances given to Russia with regard to the British designs in Thibet.

INTERNATIONAL RELATIONS IN AFRICA. — The provisions of the British-French colonial agreement (see last RECORD, p. 334) referring to **Egypt** have received the formal approval of Germany, Austria, Italy and Russia, which powers have undertaken not to insist upon a time limit upon British occupation in Egypt. In return for the free hand thus given to her in Egypt, Great Britain has given the above mentioned states assurances of most-favored-nation treatment for thirty years, and has promised to respect their treaty rights in Egypt and to grant certain liberties therein with regard to schools and resident officials. The **Moroccan** clauses of the British-French agreement caused some dissatisfaction on the part of the Spanish government whose interests in Morocco are considerable. This tension was removed in September by the conclusion of a treaty between France and Spain whereby Spain, in return for various concessions, withdraws her objection to the British-French disposition of the Moroccan question and recognizes the integrity of the Moorish kingdom subject to the paramount influence of France. The agreement, it is believed, goes far toward insuring the realization of the French ambition of a West African empire extending from the French Soudan to the Mediterranean and Atlantic. — The well nigh anarchical conditions prevailing in Morocco as well as the impotence of the sultan were strikingly revealed by the **Perdicaris incident** in May. Perdicaris, an American citizen living near Tangier, together with his step son, Cromwell Varley, a British subject, was kidnapped by a brigand named Raisuli and held for ransom. Raisuli as a condition of release demanded that $70,000 be paid him, that the governorship of various tribes be conferred upon him, that the governor of Tangier be deposed, that the Moorish troops at Tangier be withdrawn, that certain of his followers be released from prison and that immunity be guaranteed to himself and his followers for various offenses committed in the past. The government of the United States, as a means of impressing the sultan with its determination to protect American rights, assembled a formidable fleet of war vessels in Moroccan waters. On account of the dominance of French influence in Morocco the United States requested the coöperation of the French government which was readily given. At the same time the consul-general at Tangier was informed by the American government that it would hold Raisuli personally responsible for the safety of Perdicaris and that it would take no action that would amount to a recognition of the right of brigandage or blackmail in Morocco. The sultan acceded to the demands of Raisuli and Perdicaris was released.

EUROPEAN INTERNATIONAL RELATIONS. — In the latter

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part of April the President of France accompanied by the minister of foreign affairs and a distinguished party of French officials visited Rome. The reception of the French party at the Quirinal was most cordial and served to strengthen more firmly the recent Franco-Italian *entente* (see RECORD of December, 1903, p. 735). The visit gave great offense to the Pope who addressed a note of protest to the various Catholic powers. The protest was strongly denounced in both the French and Italian chambers. Other visits of courtesy were those of the King of Great Britain to the King of Denmark at Copenhagen in April and to the German Emperor at Kiel in June. The latter visit was marked by unusual evidences of cordiality between the two sovereigns and was followed up in August by the conclusion of an **arbitration treaty** between the two countries similar to that concluded between Great Britain and France in October, 1903. (See RECORD of December, 1903, p. 735.) The visit to the King of Denmark was followed by the opening of negotiations between Great Britain, Denmark and Russia with a view to insuring the neutrality of Denmark in the event of war between Russia and Great Britain. Other arbitration treaties were concluded between Holland and Denmark; between France, Sweden and Norway; between England, Sweden and Norway; and between Spain and Portugal. Similar treaties between Great Britain and Holland, and between Great Britain and Austria are in process of negotiation with prospect of early success. After difficult and protracted diplomatic effort the long expected Russo-German **commercial treaty** was signed by Chancellor von Bülow and M. Witte at Berlin on July 28. The duration of the treaty is twelve years. The other details have not been made public, but it is stated that Russia accepts the German minimum duties on grain and renounces the intention of introducing higher duties on goods imported by land than on those imported by water. Germany accepts the higher Russian duties on manufactured articles imported into Russia. Other commercial treaties were concluded between Italy and Switzerland; between Belgium and Holland; and between Italy and Austria. The Italian-Swiss agreement provides for high duties on Italian wines imported into Switzerland and similar duties on Swiss machinery, silks and textile products imported into Italy; the Austro-Italian agreement permits Italian fruits to be imported into Austria free of duty, favorable treatment is accorded a limited quantity of Italian wine, and reciprocal rates on horses, wood, and machinery are conceded to Austria. Commercial treaties are in process of negotiation between Austria and Germany; between Austria and Switzerland; and between Germany and Roumania. A labor treaty entered into between France and Italy in May, provides that savings-bank funds, old age, accident and invalid funds of each government shall be applied for the benefit of the workmen of each country who shall emigrate into the other, and makes provision for the transfer of deposits from offices of one country to those of the other. Each government also advances certain

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pledges with regard to the treatment of the women and children of the other who may be employed in factories and other workshops. On June 30, a convention was concluded between Germany and Sweden whereby Sweden renounces her rights to the city of Wismar which were conferred by the treaty of Malmoe, June 26, 1803. — In spite of strained relations growing out of the Russo-Japanese war and the British expedition into Thibet, Russia and Great Britain reached an agreement for the settlement of a dispute arising out of the seizure by Russian cruisers of Canadian sealing vessels alleged to have been taking seals in the Behring Sea. More recently an agreement was concluded for the protection of the Russian seal fisheries at the Commander Islands. — Increasing signs of a Russo-German rapprochement have been manifest since the outbreak of the war in the East, and German sympathy for Russia has not been disturbed by occasional Russian seizures of German merchant ships in the Red Sea. Of international significance was the apparently complete rupture between **the French government and the Vatican** in July. Shortly after protesting against the visit of the president of France to the king of Italy, the Pope undertook to discipline two French bishops, summoning them to repair to Rome and to bring their resignations. The French government commanded the bishops to remain at their posts and demanded of the Pope the withdrawal of the letters recalling them on the ground that the action of the Vatican was a breach of the Concordat, the government not having been previously consulted regarding the dismissal of the bishops. The Vatican having declined to withdraw the objectionable letters, the French ambassador to the Holy See was formally recalled, and subsequently the papal nuncio at Paris was notified that his mission no longer had any object. Meantime the French government announced that it favored the abrogation of the Concordat and the absolute separation of church and state. — The problem of finding a Catholic power to act as protector of the Catholics in the far East has occupied the attention of the Vatican. Austria is reported to have declined to assume the task, Spain is regarded as too weak, and the relations between the Vatican and the king of Italy preclude an Italian protectorship. — Relations between **Spain and the Vatican** have been more cordial. An agreement has recently been reached regulating the status of religious congregations in Spain, and stipulating that hereafter no new convent shall be opened except by royal decree and that new religious orders shall be established in the future only after previous agreement between the Vatican and the government.

AMERICAN-EUROPEAN RELATIONS.— An arbitration treaty between the United States and France was concluded November 1. It is stated that this treaty, like the Anglo-French agreement of October 14, 1903, provides for reference to the Hague tribunal of legal controversies, which do not affect the vital interests, the independence, or the honor of the contracting states, nor the interests of third states.

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— The **controversy with Turkey** concerning the rights and privileges of American citizens in the Ottoman Empire was brought, during the period under review, to something resembling a settlement. On July 24 a personal audience was accorded by the Sultan to Minister Leishman, and an early reply to the demands of the United States was promised. In consequence of further delays, the President directed the Mediterranean squadron then at Villefranche to proceed to Smyrna. The squadron reached Smyrna August 12, and on the following day the sultan sent his answer, giving assurance that no discrimination would thereafter be made against American citizens or educational institutions in the Ottoman dominions, and offering an indemnity of $22,500 for American property alleged to have been taken by the Turkish government. — Minor incidents in the diplomatic relations of the United States with other powers were the conclusion in June of a corporation treaty with **Russia**; the notification to Russia by the United States of the willingness of the American government to act jointly with the government of Great Britain in the protection of the seals of the Commander Islands; a protest from the **British** government against the recent act of Congress restricting trade between the Philippines and the United States to American vessels (see last RECORD, p. 340); and an incident growing out of the violation of the diplomatic privilege of the third secretary of the British embassy by the act of a Massachusetts police justice in fining that official for violating the speed laws of the state. This last matter was amicably settled by the prompt remission of the fine, the rendering of an apology by the state government of Massachusetts and the expression of regret by the Department of State. — A boundary dispute between **Brazil** and **Great Britain** concerning the limits of British Guiana was settled through the arbitration of the King of Italy. — An attack by **Haitian** soldiers upon the persons of the **French** and **German** ministers was followed by the appearance at Port au Prince of warships of the offended powers and by demands for reparation. The Haitian government was forced to punish those guilty of the outrage, to make a public apology and to give assurances of security for the future. — The somewhat arbitrary action of the **Venezuelan** government in seizing the property of the New York and Bermudez Asphalt Company for alleged failure to fulfil the conditions of its concession led to protests from the governments of **Great Britain** and the **United States** and the restoration of the property was requested. — Tension between **Great Britain** and **Nicaragua** was caused by the alleged seizure by Nicaraguan authorities of British vessels engaged in the turtle fishery. A British warship was sent to Bluefields to enforce the government's demand for reparation.

AMERICAN INTERNATIONAL RELATIONS. — On June 8 the Cuban Senate ratified the second Isle of Pines treaty concluded March 4, 1904 (see last RECORD, p. 337). — Other incidents were: a revival of

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the old dispute between **Brazil** and **Peru** concerning the Acre territory, supposed to have been already adjusted (see previous RECORDS); increased tension between **Chili** and **Peru** concerning the possession of Tacna and Arica (see last RECORD, p. 354); and strained diplomatic relations between **Argentina** and **Uruguay** owing to the alleged failure of the Argentine government to maintain strict neutrality as regards the Uruguayan insurrection. In October a treaty was concluded between **Chili** and **Bolivia** for the settlement of various long-standing disputes.

INTERNATIONAL PEACE CONFERENCE. — In September the Interparliamentary Union for International Arbitration met at St. Louis and adopted resolutions suggesting that an international conference be called by the President of the United States for the purpose of considering: (1) the questions which the Hague Conference relegated for discussion at a future conference; (2) the negotiation of arbitration treaties; and (3) the advisability of establishing an international congress to convene periodically for the discussion of international questions. These resolutions were presented to the President of the United States on September 24; and on October 21 the State Department sent to the representatives of the United States accredited to the governments signatory to the act of the Hague Conference of 1899, a circular letter proposing a **second Peace Conference** at the Hague. As topics of discussion the American government suggested primarily the subjects which at the Hague Conference were proposed for future consideration, *viz.*, the rights and duties of neutrals, the inviolability of private property in naval warfare, and the matter of the bombardment of ports, towns and villages by naval forces. — Special topics further suggested were the distinction between absolute and conditional contraband of war, the inviolability of official and private correspondence of neutrals and the treatment due to refugee belligerent ships in neutral ports. — In conclusion it was suggested that a procedure should be adopted by which states non-signatory to the acts of the Hague Conference might become adhering parties. Included in the letter were the resolution of the United States Congress of April 28, 1904, in favor of the exemption of private property at sea, not contraband of war, from capture or destruction by belligerents, and the resolutions of the Interparliamentary Union noted above.

II. THE UNITED STATES.

NATIONAL AND STATE ELECTIONS. — **The Republican National Convention** met at Chicago, June 21, and organized by the election of Elihu Root of New York as temporary chairman and Joseph Cannon of Illinois as permanent chairman. In his address to the convention Mr. Root declared that it would be the policy of the Republican party to treat the Philippines as it had treated Cuba, *i.e.*, to establish in the Philippines, under the protectorate of the United States,

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an independent government, so soon as the inhabitants should be prepared for self-rule. On June 23 Theodore Roosevelt of New York and Senator Charles W. Fairbanks of Indiana were unanimously nominated as the candidates for President and Vice-president respectively. The platform adopted by the Convention advocated the maintenance of the gold standard, legislation for the encouragement of the merchant marine, the maintenance of a powerful navy, the exclusion of Chinese labor, the enforcement of the civil service law, "liberal administration" of the pension laws, the maintenance of the "principles of protection," the readjustment of the existing duties only where the "public interest demands," the settlement of international differences by arbitration and the reduction of the representation in Congress of any state which by special discrimination denies the elective franchise to any class of citizens. Combinations of capital and labor alike were declared to be the "result of the economic movement of the age neither of which must be permitted to infringe upon the rights and interests of the people, but both of which are entitled to the protection of the laws." George B. Cortelyou, Secretary of the Department of Commerce and Labor, was selected as chairman of the national committee. — **The Democratic National Convention** met at St. Louis, July 6, and organized by the election of John S. Williams of Mississippi as temporary chairman and Champ Clark of Missouri as permanent chairman. On July 9 Alton B. Parker of New York was nominated on the first ballot as the candidate for President, and Henry G. Davis, of West Virginia, was nominated as the candidate for Vice-president. Mr. Parker's leading opponent for the nomination, W. R. Hearst of New York, received 200 votes in the convention, but before the results of the first ballot were announced Parker's nomination was made unanimous. The Democratic Platform advocated greater economy in the administration of the government, legislative investigation of departments suspected of harboring corruption, a "wise, conservative and business-like revision and a gradual reduction of the tariff by the friends of the masses," a reduction of the duties on trust-made articles, an enlargement of the powers of the Interstate Commerce Commission, a reciprocity treaty with Canada, a reduction of the army to a point "historically demonstrated to be safe and sufficient," a liberal increase of the navy, generous pensions for surviving soldiers and sailors "not by arbitrary executive order but by legislation," the "open door" in the Orient and independence for the Philippines. The construction of the Panama Canal was endorsed but the methods by which the canal concession was secured were strongly condemned. On the trust question the platform denounced the policy of the Republicans and demanded the "vigorous and impartial enforcement" of the anti-trust statutes. As reported by the sub-committee, the platform contained a "plank" virtually accepting the gold monetary standard, but mainly through the influence of Mr. Bryan this was stricken out in the full committee, and as finally adopted

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the platform contained no reference to the currency question. During the closing session of the convention, July 9, a telegram from Mr. Parker to one of his leading supporters was made public, announcing that he regarded the gold standard as irrevocably established and declaring that, if his views on this matter were unacceptable to the majority of the convention, he wished it to select another candidate. After heated discussion the party leaders suggested, and the convention agreed, that a reply should be sent to Mr. Parker stating that the gold standard was not an issue and that nothing in his views precluded him from accepting the nomination. Thomas T. Taggart of Indiana was selected as chairman of the Democratic national committee. — The **Populist National Convention** met at Springfield, Illinois, July 5 and nominated Thomas E. Watson of Georgia for President and T. H. Tribbles of Nebraska for Vice-president on a platform similar to the Populist platforms of 1892, 1896, and 1900. The Prohibitionist party, the Social Democratic party and the Socialist Labor party also nominated regular tickets for President and Vice-president. — **State and Congressional Elections** in Oregon, June 6, in Vermont, September 5, and in Maine, September 12, were regarded as presaging Republican success in the national election. In Oregon the Republicans elected all the Congressmen; in Vermont they obtained a majority of over 30,000; in Maine, a majority of about 27,000. — The national campaign was characterized by lack of enthusiasm and absence of excitement, until, towards the close, Judge Parker asserted that the selection by the Republican party, as the manager of its campaign, of the former Secretary of Commerce, who possessed the secrets of the corporations, and the solicitation by him of campaign contributions from the corporations, were scandalous acts that suggested corrupt practices. The implication that the corporations were being blackmailed was declared by Mr. Roosevelt to be "atrociously false;" and it was officially denied that Mr. Cortelyou possessed any corporation secrets. The **national elections**, held on November 8, resulted in an overwhelming Republican victory. Mr. Roosevelt carried all the Northern states and also West Virginia and Missouri, securing 335 electoral votes as against 133 for Judge Parker. — At the close of this RECORD the eight electoral votes of Maryland were still in doubt. The returns further indicate a popular plurality for Roosevelt of about one and three-quarter millions. In the next Congress the House of Representatives will apparently contain 242 Republicans and 144 Democrats; the Senate, 56 Republicans and 34 Democrats. — In Massachusetts, Missouri, and Minnesota and apparently in Colorado, Democratic governors were elected, although these states gave Mr. Roosevelt large majorities. — Immediately after the election President Roosevelt issued a statement that under no circumstances would he accept a nomination for an additional term.

INTERNAL ADMINISTRATION. — The following changes were made in the **cabinet**: William H. Moody of Massachusetts was appointed

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Attorney-General to succeed P. C. Knox who resigned to accept an appointment as United States Senator from Pennsylvania in the place of Senator M. S. Quay, deceased; Paul Morton of Illinois was appointed Secretary of the Navy to succeed William H. Moody; Victor H. Metcalf of California was appointed Secretary of the Department of Commerce and Labor to succeed G. B. Cortelyou who resigned to become chairman of the Republican national committee; and Robert J. Wynne, First Assistant Postmaster-General, was appointed Postmaster-General to succeed Henry C. Payne deceased. (For other appointments, see DEPENDENCIES.) — A change in the administrative work of the **Civil Service Commission** was effected by the organization of thirteen districts, each to be under a designated agent who will be required to report from time to time to the commission at Washington. The main purpose of the reform is to relieve postal officers of routine work connected with civil service examinations and to secure the keeping of a more accurate record. — The criminal prosecutions on account of **frauds and irregularities in the postal service** (see last RECORD, p. 342) came to an end on May 25 with the acquittal of H. J. Barrett and General James N. Tyner, Ex-Postmaster-General and later Assistant Attorney-General of the Post-Office Department, both charged with conspiracy to defraud the government in the matter of postal contracts. — An investigation of the alleged traffic in **forged naturalization papers** in the city of New York was undertaken by the federal authorities in conjunction with the New York state superintendent of elections. It was discovered that a band of swindlers were engaged in a systematic business of selling at high prices fraudulent naturalization certificates, the number sold during the last year being estimated at not less than 100,000.

THE DEPENDENCIES. — In **Porto Rico** the proposed five-million-dollar loan for permanent public improvements was the chief subject of public interest. At the last regular session of the Porto Rican Assembly a commission was appointed to report on the need of such a loan, the form which it should take and the terms upon which it could be placed. On May 23 a special session of the Assembly was convened to consider the report of the commission which strongly recommended the proposed loan. The Executive Council concurred in the recommendations of the committee, but the House of Delegates disagreed as to the form of the loan and the uses to which it should be applied, and all efforts to reach a compromise were fruitless. On July 4 the new governor, Beekman Winthrop, assumed office. His inaugural address urged a further extension of the public school system and the building of better highways. Other changes in the Porto Rican administration were: the appointment of Roland P. Falkner of Pennsylvania to be commissioner of education *vice* S. M. Lindsay, resigned; of Regis H. Post of New York to be secretary of Porto Rico; of Erastus S. Rockwell of the District of Columbia to be auditor; and of A. G. Wolf of the District of Columbia,

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to be associate justice of the supreme court *vice* Judge Sulzbacher resigned. — In the **Philippines** a new revenue law was enacted by the commission in July. It repeals many taxes imposed under the Spanish law and levies new taxes on alcoholic products, beer, tobacco, cigars, cigarettes and matches, and provides for certain license taxes. It is estimated that the annual revenue from the new law will aggregate about five million dollars in gold. — The Secretary of War decided in May to place one hundred or more Filipino students in American universities during the forthcoming year. Their expenses are to be paid by the government, and in return they are required to enter the government service of the Philippines upon the completion of their courses of study and continue therein for a period of five years. — The **pacification of the Philippines** seems complete everywhere except on the island of Mindanao. On May 8 a detachment of United States infantry consisting of thirty-nine enlisted men while searching for Datto Ali, a troublesome insurgent leader, was attacked by a band of Moros near Lake Liguasan and two lieutenants and fifteen men were killed. On August 25 a detail of constabulary was ambushed on the island of Leyte by bank dits and the captain of the detail killed. In October General Corbin succeeded General James F. Wade in command of the Philippines.

THE ISTHMIAN CANAL. — On May 9, in pursuance of the act of Congress passed in April (see last RECORD, p. 347), the President formally promulgated rules for the government of the Panama Canal zone. The direction and supervision of the work of the Canal Commission was intrusted to the Secretary of War, and General George W. Davis, the army member of the commission, was appointed governor of the American zone with authority to appoint a judge who shall exercise the judicial power therein. Osceola Kyle of Alabama was appointed to this position. Until the expiration of the fifty-eighth Congress the Canal Commission will exercise legislative powers over the American strip. The President's instructions authorize the commission to make needful rules and regulations for the government of the zone, to establish therein a civil service system, to acquire the necessary land and other property by expropriation, to make contracts for engineering and construction works, and to make requisitions on the War Department for funds needed. The municipal laws of the canal zone are to be administered by the ordinary tribunals substantially as they were before February 26, 1904. Competent local officers are to be continued in their positions. Those provisions of the federal constitution which relate to due process of law in judicial procedure, together with the various other guarantees for the protection of individual liberty, are "extended" to the canal zone. The commission is empowered to exclude various classes of persons whose presence may impede the prosecution of the work of excavation, and it is expressly instructed to annul all laws or franchises which permit lotteries or other gambling devices forbidden by the laws of the United States. On the

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same day on which the regulations for the government of the canal zone were promulgated, the Secretary of the Treasury delivered to J. P. Morgan and Company, agents for the government, a warrant for the sum of $40,000,000 in full payment of the property and franchises of the Panama Canal Company. On May 20 a warrant for $10,000,000 was delivered to the agents of the Panama Republic in payment of the concessions granted through the Hay-Varilla treaty (see last RECORD, p. 346). — On June 24 an order was issued by the War Department for regulating the importation of goods into the canal zone. Imports from the United States are to be admitted free of duty; upon those from other countries the regular rates prescribed by the Dingley tariff act will be imposed. Two collection districts were established, one at Ancon, the other at Crystobal, and a convenient number of post-offices were provided for.

THE FEDERAL JUDICIARY. — In the case of Dorr *v.* United States the Supreme Court decided on May 31 that the inhabitants of the Philippine Islands, although owing allegiance to the United States, are not entitled to the right of trial by jury in the absence of congressional enactment granting such right. Justice Harlan dissented and asserted that the view of the majority was equivalent to an amendment of the constitution. In the case of Kepner *v.* United States, the Supreme Court upheld the right of the government of the Philippines to take an appeal in criminal cases from the decision of a lower court, such appeal not being in violation of the Fifth Amendment which prohibits the placing of an accused person twice in jeopardy of life or limb for the same offense. Justices Brewer, Holmes, White and McKenna dissented.—In the case of United States *v.* Sing Tuck the Supreme Court decided, April 25, that the mere allegation of citizenship by a Chinese person seeking admission to the United States was not sufficient to deprive the inspector of jurisdiction under the alien immigrant law, and that the Chinese applicant could not resort to the courts without first taking the appeal, provided for in the act, to the Secretary of Commerce and Labor. — An act of the legislature of Texas directed solely against railroad companies and imposing a penalty for permitting certain obnoxious grasses to grow on their right of way was held in Missouri, Kansas and Texas Railroad Company *v.* May not to be contrary to the Fourteenth Amendment. The right of the states to classify the subjects of legislation and enact laws affecting differently persons and property falling within the different classes was upheld by the Supreme Court in the case of Field *v.* Barber Asphalt Company. — The right of the Supreme Court to review the judgment of the United States District Court of Porto Rico in a criminal case was sustained in Crowley *v.* The United States; and the right to bring an action against the United States in the District Court for Porto Rico whenever such action is allowed in district or circuit courts of the United States was upheld in Hijo *v.* United States. — By a decision of Judge Bradford, United States circuit judge for the District

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of New Jersey, the directors of the Northern Securities Company were restrained from redistributing the stock of the company according to the method agreed upon, whereby each shareholder was to receive as an equivalent of his Northern Securities stock a proportionate amount of stock in both the Great Northern and the Northern Pacific railroads (see last RECORD, p. 348).

LABOR AND CAPITAL. — The deplorable conditions attending the **Colorado coal strike** (see last RECORD, p. 349) have continued with little prospect of early improvement. In some localities conditions amounting to anarchy have prevailed and assassination and riots have been matters of common occurrence. Many non-union miners have been beaten and driven out of the community. Printing-presses and other property have been wantonly destroyed. The second week of June was one of terrorism in Teller County growing out of the killing of fifteen non-union miners and the wounding of a number of others by the explosion of an infernal machine placed by Union sympathizers under the railroad platform at Independence, a station near Cripple Creek. At Victor, on the same day, a mass meeting held to discuss the outrage led to a riot; troops who were called in to quell the disturbance were fired upon from windows of neighboring houses; they returned the fire and charged upon the hall in which the meeting was held and killed a number of the rioters. One of the incidents of the affair was the action of the Mine Owners' Association in forcing the sheriff of the county to resign his office under threat of hanging. Other local officials suspected of sympathy with the union miners were dealt with in a similar fashion. After the riot at Victor, Teller County was proclaimed to be under martial law and the adjutant general of the state militia, Sherman M. Bell, took charge of affairs. In a pitched battle with a force of union miners at Dunnville on June 8 General Bell captured fourteen of them and killed several others. This was followed by a second collision at Big Hill in which other captures were made without loss of life on either side. Meantime the Citizens Alliance sent out a decree that every person connected with a labor union must either sever his connection with such organization or leave the district. The military authorities, aided by the Citizens Alliance, soon restored a measure of order. Four hundred union miners were arrested and confined in a military "bull pen" and a large number of these were deported from the state and left on the prairies of Kansas, only to be turned back by the authorities of that state. Five hundred others were summoned to headquarters and given their choice of leaving the country or suffering confinement in the "bull pen."—By a decision of the state supreme court in the case of Moyer, rendered on June 6, the right of the governor to declare martial law and suspend the writ of *habeas corpus* was sustained. — An extensive strike in the principal **meat packing establishments** of the country began on June 12 and lasted until September 8. The cause of the strike was the action of the Chicago

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packers in reducing the wages of unskilled laborers from 18½ to 17½ cents per hour. After unavailing protests the skilled laborers decided by referendum to strike in the interest of the demands of the unskilled workmen. They were joined by the employees in the large packing establishments of Omaha, Kansas City, New York and other cities, aggregating about 50,000 men altogether. On July 26 the butchers were joined by the workmen in the various allied trades, amounting to about 7,500 men. As early as July 20 under pressure of public opinion the packers and labor leaders reached an agreement to arbitrate the question of hours and wages and the strike was called off; but the packers having refused to discharge all the extra men hired after July 12, the strike was renewed an hour after the resumption of work, on the ground that the packers had broken their agreement with regard to the re-employment of the strikers. The strike now grew to serious proportions. The strikers prepared for a long struggle and the butchers began importing large numbers of workmen from outside points. The usual disorders incident to a great strike followed; non-union laborers were assaulted and beaten, some were killed, and many conflicts with the police occurred, especially in Chicago. After various conferences between representatives of the packers and strikers, an agreement was reached on September 8 and the strike was called off. The packers agreed to re-employ the strikers as rapidly as places could be found, and both skilled and unskilled workmen were to receive the same wages as before the strike. — A strike of less serious proportions was that of the **cotton mill employees of Fall River**, Massachusetts in July, in consequence of a reduction of 12½ per cent in wages. About 26,000 employees were involved and no attempt was made to operate the mills affected. At the close of this RECORD all attempts to terminate the strike had been unsuccessful. — Strikes in the **building trades** of New York City and Philadelphia have occurred during the summer.— **Judicial decisions affecting labor** were rendered by the supreme courts of Illinois and Wisconsin, holding that contracts by which employers agree to employ only members of labor unions ("closed shop") are illegal on the ground that such contracts tend to create a monopoly of labor in favor of labor unions; by the supreme court of Indiana, holding that a statute requiring the weekly payment of wages is unconstitutional on the ground that, by interfering with the liberty of contract, it deprives citizens of their liberty and property without due process of law; and by the supreme courts of Illinois and Ohio, denying that the duty of giving a discharged employee a letter of recommendation or clearance card is imposed upon employers by the common law. A considerable number of injunctions were issued in various states forbidding strikers from interfering with non-union laborers. Of interest was the election of Judge George Gray of Delaware to be president of the **National Civic Federation** as the successor of the late Senator Hanna.

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MUNICIPAL AFFAIRS. — An active and successful campaign was waged by the city of Chicago to secure the adoption at the November election of a constitutional amendment empowering the legislature to grant the city a special charter whereby its government may be reorganized, its power to issue bonds for permanent improvements increased and the system of justice and police courts improved. The proposed amendment authorizes the legislature to permit the city to issue bonds up to five per cent of the total actual value of all taxable property instead of five per cent of the assessed value, and to establish a new method of assessment and collection. — In Buffalo startling disclosures were made regarding the administration of various departments of the city government, and seven aldermen were indicted on the charge of bribery. In Memphis a citizens' committee demanded the resignation of the mayor and other officials or the suppression of the gambling places. Under the pressure thus exerted the city officials have entered upon a policy of reform. In New York City the mayor removed in October all the members of the civil service commission for violation of the laws and appointed new commissioners.

LYNCH LAW. — No fewer than fifty-five cases of lynching have been reported since May 15, all except two of which occurred in the southern states. Of these, fifteen occurred in Georgia, seven in Mississippi, five in Alabama and four each in Kentucky and Louisiana. In the two Northern states of Idaho and Wyoming white and black murderers were lynched by white mobs. Of the persons lynched sixteen were accused of rape, three of attempted rape, twenty of murder, two of conspiracy to murder, two of murderous assault, two of uttering threats, three of offering insults to white women and one of burglary, while "race prejudice" was given as the reason for three lynchings. In three cases the lynching was done by negro mobs, the victims in each instance being negroes. In Louisiana a white man was lynched by a white mob for killing a railroad conductor, and in Wyoming a white man was lynched for murderous assault on a white girl. The most widely discussed case of lynching occurred at Statesboro, Georgia, where on August 16 a mob overpowered the militia, took from the officers two negroes, Reed and Cato, who had been legally convicted of murder and sentenced to death, and burned them at the stake. On the following day three other negroes, charged with complicity in the crime for which Reed and Cato were burned, were lynched. It having been discovered that the company of militia which was charged with protecting the negro prisoners had thrown away or lost its supply of ammunition, the captain was court-martialed. In Alabama a militia company which failed to protect a negro prisoner from a white mob was by order of the governor mustered out of service. At Eupora, Mississippi, the sixteen-year-old victim of a negro assisted in the lynching of her assailant in the presence of three thousand spectators by adjusting the noose and leading the horse from under him.

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At Cedartown, Georgia, the colored assailant of a thirteen-year-old girl was shot to death and his body burned on the public square. Unprecedented in the annals of Mississippi was the conviction and condemnation to life imprisonment by a white jury of a white man for assaulting a negro girl. — In various Southern localities there has been a recrudescence of the **white cap movement.** In parts of Mississippi it has assumed such serious proportions as to lead to organized effort among the more substantial classes of white people to prevent the driving off of the negro land owners. In this state energetic action has been taken by the governor to break up the white cap organizations.

III. LATIN AMERICA.

In **Argentina** Señor Manuel Quintana was elected President of the republic, and was duly inaugurated in October. His message at the opening of Congress declared the country to be in a prosperous condition, and announced various legal and administrative reforms. — In **Bolivia** a presidential election took place on the first of May resulting in the choice of Colonel Montes as President. — The unfavorable industrial and financial condition of **Brazil** has been a subject of general discussion. A widespread famine was reported in the northern portion of Brazil while the federal treasury showed a deficit of over $4,000,000. Nevertheless an extensive naval program has been undertaken by the government. — In **Colombia** a presidential election occurred on July 4. The contest was highly exciting and the republic was brought to the verge of revolution. General Rafael Reyes was elected over Dr. Velez, and assumed office on August 7. — In the **Cuban** Congress the abstention of the members belonging to a radical faction made it impossible for the House of Representatives to transact business for lack of a quorum. In July the soldier members of the radical faction joined the moderates in order to secure the passage of a soldiers' pay bill, but, this done, they resumed their attitude of obstruction. — In **Chili** a cabinet crisis occurred in May. — In **Mexico** two important constitutional amendments were ratified. One of these creates the office of vice-president of the republic; the other extends the presidential term from four to six years. In July Porfirio Diaz was reëlected as President of the republic, and Rumon Carrol as Vice-president. — In **Paraguay** a revolution has been in progress throughout the summer and autumn. In August a reign of terror was reported to exist in Assuncion; business was suspended and the streets deserted. The insurgents under General Ferreira established a provisional government at Villa del Pilar and at the close of the period under review their strength was reported to be daily increasing. — In **Peru** in August Señor Jose Pardo was chosen President. The revolution in **Uruguay** (see last RECORD, p. 354) came to an end early in November, the gov-

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ernment granting to the insurgents complete amnesty and the restoration of their property. — In the new Republic of **Panama** the government has decided to adopt a gold monetary standard. — The revolution in **Santo-Domingo** (see last RECORD, p. 354) came to an end in June, the insurgents agreeing to submit to the authority of the government and deliver up their arms, in return for which the government granted a general amnesty and agreed to assume the expense incurred by the revolutionary authorities. — A new constitution, the fifteenth since the creation of the republic, was promulgated in **Venezuela** in May. Of interest to other countries are the provisions requiring foreigners who wish to enter the republic to present identification papers and certificates of good character from the government of the country from which they emigrate.

IV. EUROPE.

GREAT BRITAIN. — On August 15 **Parliament was prorogued** until November 3. The royal address referred to the friendly relations between the King and foreign powers, the visits of the King to the Emperor of Germany and to the King of Denmark (see EUROPEAN INTERNATIONAL RELATIONS), the various treaties concluded with foreign powers (see last RECORD, p. 334), military operations in Somaliland (see AFRICA, below), the settlement of the boundary dispute with Brazil (see AMERICAN-EUROPEAN RELATIONS, above) and the expedition to Thibet (see INTERNATIONAL RELATIONS, THIBET). The address expressed regret at the continuance of hostilities between Russia and Japan and declared that the government would "energetically support the subjects of the king in the exercise of the rights recognized by international law as belonging to neutrals." The session of Parliament was marked by unusual turmoil. The rather formidable program of the government provoked the hostility of the opposition to an unusual degree, and led its members to resort to obstruction tactics. They harassed the parliamentary leaders with motions for censure and adjournment, with questions and denunciations, and at times by hoots and jeers prevented the premier from speaking. Early in July the government was driven to adopt the closure on several important measures and to hold all-night sittings. At the same time it was compelled to drop from its program not less than twenty-one of the measures which it had set out to pass and some of which had already been the subject of extended discussion. Among these was the Alien Immigration bill, which proposed to restrict immigration into England and which, in spite of strong objection to its alleged anti-Semitic character, had already passed its second reading. Other important measures dropped were: the Scotch Education bill, the Port of London bill, the Irish Land bill, the Cunard Loan bill, and the Penal Servitude bill, the latter of which proposed important reforms in the existing method of punishing criminals. Bills which passed the second

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reading but which apparently did not become law were: the Prevention of Corruption bill, which has been before Parliament many years and which is aimed at the evil of blackmailing; the Street Betting bill, which proposed to prohibit betting in the streets, parks, gardens and saloons; and the Trades Union bill, which proposed to legalize peaceful picketing, to amend the law of conspiracy in so far as trade disputes are concerned and to protect the funds of trades unions against legal process for recovery of damages resulting from the action of members of such unions, the latter feature being intended to meet the situation caused by the Taff Vale decision. Among the few acts which became law the most important was the Licensing bill, which was the subject of debate throughout the greater part of the spring and summer and which has excited general interest in Europe and America. Its most important feature is a provision that, whenever the renewal of a license to sell intoxicating liquor is refused upon public grounds to a man who has not forfeited it by misconduct, he shall receive compensation from a fund provided by a graduated tax upon all the liquor dealers in the district. The bill encountered the most strenuous opposition both in and out of Parliament and was passed only after the application of the closure. Other bills which became law were: the Welsh Coercion act designed to compel the Welsh county councils to administer the Education act of 1902; an act to carry into effect the Anglo-French Colonial agreement of April last (see last RECORD, p. 334); and an act designed to facilitate the earlier closing of shops throughout the United Kingdom. A bill enabling women to sit in municipal councils was rejected by the House of Lords and a bill to repeal the Irish Crimes act was defeated in the House of Commons. — Several unsuccessful attempts were made to upset the government on the **fiscal question**, but Premier Balfour resisted every attempt to drag this question into the discussion, contending that it was not before Parliament at the present session. From this position, in which Mr. Chamberlain heartily concurred, he could not be moved by the taunts of cowardice levelled against him by the opposition. On May 18 a motion was made condemning the "protective taxation of food as burdensome to the people and injurious to the Empire." As an amendment to this motion the government carried a resolution declaring that the House considered it unnecessary to discuss the question of fiscal reform and expressing the confidence of the House in the present administration. The government was put to the test again on August 1, by a motion of Sir Henry Campbell-Bannerman proposing to censure the government for the prominent part taken by two members of the cabinet on July 14 in the newly reconstructed Liberal-Unionist council of which Mr. Chamberlain was elected president, and which, on the day of its reorganization, adopted a resolution favoring fiscal reform and preferential treatment of the colonies. The resolution of censure was rejected by a majority of 78 votes. — On July 20 the

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report of Mr. Chamberlain's **tariff commission** on the iron and steel trades (see last RECORD, p. 355), was made public. It defends the position of Mr. Chamberlain, declares that the decline of British industries is due to German and American "dumping" and recommends (1) a low scale of duties for countries admitting British wares on fair terms; (2) a lower tariff for the colonies; and (3) a maximum tariff subject to reduction by negotiation. In the meantime Mr. Chamberlain has continued his campaign with unabated vigor. In **by-elections** in the divisions of Osmestry, Harborough, Devonport and Reading the opposition have triumphed. — The report of the royal commission on the **militia** and **volunteers** (appointed in April, 1903) contains recommendations for increasing the efficiency of both forces. The militia is declared to be unfit at present for defense and the volunteer force unqualified to take the field against a regular army. The commission recommends the continental system of compulsory training for the whole able-bodied male population in a period of continuous service with the colors, such instruction to be given by a body of specially educated and highly trained officers. The report has called forth much popular opposition. — The decision of the House of Lords in the **Free Church Case**, rendered in August, awarded property estimated to be worth from $50,000,000 to $75,000,000 to the remnant of the Free Church which refused in 1900 to follow the overwhelming majority of the church in its union with the United Presbyterians. The beneficiaries of the decision are twenty-eight Highland ministers of Gaelic speaking congregations. The decision is based on the view that a theoretical acceptance of the principle of establishment (although coupled with dissent from the church actually established) is one of the fundamental tenets of the Free Church; that the donors of the funds of that church acted on the expectation that it would continue faithful to that tenet; and that by uniting with the "voluntaryist" United Presbyterians the majority abandoned this tenet and were therefore no longer entitled to administer the funds which the Free Church held in trust.

THE BRITISH COLONIES AND INDIA. — The Watson Labor ministry for the commonwealth of AUSTRALIA (see last RECORD, p. 357) was short lived. It was defeated in July on a motion for the recommittal of the clause of the arbitration bill granting a preference to trade unionists. The governor-general having declined to accede to Mr. Watson's request to dissolve parliament, a new **coalition cabinet** was constituted under the premiership of Mr. Reid. — In August the commonwealth parliament definitely selected, for the **federal capital**, Dalgety, a small interior village in New South Wales about 300 miles south of Sydney. The commonwealth budgetary statement, presented to the House in October, showed a total revenue of £4,631,056, and an expenditure of £4,252,562, the balance being returnable to the states. — Changes of government have taken place in West Australia where a

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labor ministry was constituted, in South Australia, in New South Wales and in Queensland. Parliamentary elections have occurred in West Australia, New South Wales and in Queensland. The labor vote won a notable victory in the two first mentioned states and through the activity of the women suffragists the opposition triumphed in the latter on the issue of the extravagance of the administration. — Worthy of note in the affairs of **New Zealand** were: the retirement of the governor, Lord Ranfurley, and the inauguration in June of his successor, Lord Plunkett; the adoption by the Legislative Council of a resolution expressing regret at the introduction of Chinese laborers on the Rand (see last RECORD, p. 367) without the approval of the white population, and the announcement of the government program in the House of Representatives in June. — In the affairs of **Canada** an important political event was the appointment of Earl Grey, lord-lieutenant of Northumberland, as governor-general to succeed Lord Minto, whose term expired in October. — The **Dominion Parliament** was prorogued on August 10, after a session of five months. The legislation of the session included certain amendments to the contract between the Grand Trunk railway and the government, an act for the re-organization of the militia and an act against "dumping." The militia bill provides for a reorganization of the Canadian militia on the lines of the reforms recently adopted in Great Britain. Instead of a minister of militia and a commander-in-chief as heretofore, a council of seven members consisting of three civilians and four soldiers, with a chief of staff and an inspector-general, is to have control. The "dumping" act was a measure designed to restrict, by the imposition of countervailing duties, the importation from the United States of certain wares at prices lower than the home prices. — Two measures which were the subject of extended debate and the latter of which passed the House of Commons were: an alien labor bill which proposed to prohibit the landing of paupers, diseased persons, polygamists and anarchists, and to make railway companies illegally importing aliens into Canada liable for the expense of their deportation; and a bill authorizing the government to cancel any license issued to manufacturers who entered into exclusive contracts with dealers. — The **Canadian budget** was presented early in June with a statement that the surplus for the last fiscal year was $14,345,166, and that the estimated surplus for the current year exceeded $16,000,000. **The Election** of November 3 gave the Liberals the extraordinary majority in parliament of at least seventy-five. The chief issues raised by the Conservatives were preferential trade with other parts of the British empire and higher protection for manufacturers, the "extravagance" of the government, the Pacific railway scheme (see last RECORD, p. 356), and the Dundonald incident (see below). Among the Conservatives who were defeated was Robert Borden, the Conservative parliamentary leader. An incident widely discussed both in and out

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of parliament was the **dismissal of Lord Dundonald** from the command of the Canadian militia for delivering a speech in which he condemned the interference of politicians in military affairs. — Events of interest in **India** were the re-appointment of Lord Curzon as viceroy and the successful termination of the expedition to Thibet (see above, INTERNATIONAL RELATIONS). For the British South African colonies, see AFRICA).

FRANCE. — The all-absorbing topic in France has been the long expected **rupture with the Vatican** (see EUROPEAN INTERNATIONAL RELATIONS, above). On May 27 after a long and exciting debate the Chamber of Deputies by a vote of 427 to 95 approved the action of the government in recalling the French ambassador to the Vatican. A Socialist motion to break off all relations with the Vatican and to denounce the Concordat was, however, defeated by a vote of 385 to 146; and a resolution offered by a Nationalist deputy requesting the government to negotiate with the Pope for a separation of church and state was defeated by a vote of 507 to 18. After this, Premier Combes announced that the question of the separation of church and state would be taken up for discussion in January, 1905. During a discussion of the religious question the premier stated that he and his son had been approached by representatives of the Chartreuse monks who offered large sums of money to secure the revocation of the order of expulsion. The Chamber appointed a committee to investigate the charges and after taking a vast mass of testimony it reported that the premier's charges were unfounded. On July 12, however, the Chamber, after a tumultuous session, rejected the report of the committee by a large majority and sustained the premier's charges of attempted bribery. On the following day parliament adjourned until October. — In May a decree was promulgated ordering the removal of all crucifixes and pictures from the schools and court rooms and designating Good Friday as the day for the execution of the order. — At the opening of parliament in October the government won another victory by a vote giving precedence to the discussion of the relations between France and the Vatican. Premier Combes reaffirmed that the "separation of the church and state has become inevitable." — The result of the **municipal elections** in May showed that the Nationalists had lost considerably in Paris. In the provinces the result was generally favorable to the government except in some of the large industrial centers, such as Bordeaux, Lille and Havre. — The **election for Councils General** took place in August. The complete returns showed a ministerialist gain of 109 seats. A feature of the industrial situation was a great strike among the employees in the dock yards of Marseilles in September.

GERMANY. — The Reichstag passed in May the so-called Stengel law which introduces important modifications into the imperial system of finances, notably as regards the matricular contributions of the states

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(see last RECORD, p. 360). The unfavorable position of the imperial finances, the necessity for retrenchment and the means of meeting a large deficit were the subjects of prolonged and lively discussion. Other imperial laws enacted since the last RECORD extend the application of the law relating to insurance against invalidity and old age to the commercial marine industry; provide for the stamping out of phylloxera; and institute special tribunals to settle conflicts between capital and labor in commercial industries. A provision of the latter law which met strong opposition was that prohibiting women from serving as members of the new tribunals. An important measure which reached an advanced stage on the legislative calendar was the inland canal bill which carried an appropriation of $100,000,000 for the enlargement and extension of the canal system. Two other measures which the government has undertaken to pass provide indemnification for innocent persons who have been subjected to criminal prosecution and place at the disposal of various relief bodies a grant of 3,000,000 marks for the benefit of railway employees. The session was marked by attacks on the foreign policy of the empire and by evidences of the growing unpopularity of the imperial chancellor. — Of general interest to the people of Germany was the announcement in September of the betrothal of Crown Prince Frederick William to the Duchess Cecilia of Mecklenburg-Schwerin. — In **Baden** a law was adopted extending the state suffrage so as to make it coincident with that for the election of members of the Reichstag. In **Bavaria** a suffrage reform measure was rejected. In **Wurtemburg** a school bill, passed by a large majority in the lower chamber and strongly supported by the government, was rejected in the upper chamber, chiefly through clerical influence. The result was an agitation for the "reform or suppression of the upper chamber." A resolution which was the subject of heated discussion in the **Prussian Landtag** and which passed the Chamber of Deputies declared that public elementary schools should be either Protestant or Catholic, and that each should be attended exclusively by pupils of one faith and instructed by teachers professing the creed of their pupils. For the management of the said schools it was furthermore proposed that special school boards should be created to represent the interests of religious education. Among the measures which became law in Prussia were: an act providing for a loan of 146,815,000 marks for the completion of state railroads; an act for the protection of game; and an act to raise a loan of 15,000,000 marks with which to improve the conditions of habitation among workmen in the employ of the state and to provide assistance for such as are incapable of performing manual labor. The Pomeranian bank scandal in which many prominent persons were involved, among them Prince von Mirbach, master of ceremonies of the court of the Empress, aroused much indignation and led to an interpellation in the Prussian Landtag. Prince Mirbach was compelled to resign his office. At Konigsberg seven members

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of the Social Democratic party were arraigned on the charge of high treason for smuggling anarchistic literature into Russia. The prosecution, which aroused much comment unfavorable to the government, proved a fiasco. — **Changes of rulers** have occurred in Saxony by the death of King George and the succession of his son Frederick and in the principality of Lippe-Detmold by the death of the regent. The assumption of the regency by Count Leopold, son of the deceased regent, was opposed by the Emperor but supported by the local government, and by the local diet (see RECORD of June, 1899, p. 381).

ITALY. — The legislative output of the Italian parliament, which adjourned the first week in July, included the enactment of measures for the financial relief of the municipalities of Naples and Rome, both measures involving the expenditures of considerable sums; a bill for the water supply of Apulia; a bill conferring upon the government full power to conclude commercial treaties with Austria and Switzerland; and budget bills embodying the ministerial estimates. The **program for public works** includes the construction of a railway from Cunéo to Nice and of a new direct line from Rome to Naples. An important measure which met defeat in the parliament was the perennial divorce bill. After a parliamentary investigation Signor Nasi, ex-minister of public education and one of the leading statesmen of Italy, was found guilty of falsifying his accounts, misappropriating public funds and of other irregularities in office. The parliament having referred the case to the criminal courts with instructions to begin prosecution, the accused statesman fled to Switzerland. — A subject of lively debate in the Chamber of Deputies was the proposed **increase of the navy**. A parliamentary committee was appointed to inquire into the present condition of the navy and report upon its needs. — By royal decree, promulgated in October, November 6 and 13 were fixed as the dates for the **general elections**, the issues submitted to the electorate including better secondary education, state ownership of all roads, taxation reform, refunding of the state debt, maintenance of the existing scale of military expenditure, prevention of strikes in public employments, and relief of the southern provinces. The elections resulted in a victory for the government, the Conservative gains being due largely to the participation in the election of many Catholics who had abstained from voting since the establishment of Italian unity. An event which caused general rejoicing throughout Italy was the birth of an heir to the throne on September 15. The infant was christened with the name of Humbert and was given the title of Prince of Piedmont. — An incident of the **industrial situation** was a general strike in September inaugurated by the Socialists as a protest against the severity used by the government in suppressing labor disturbances. The strike collapsed after a week's duration. The economic condition of Italy continues to improve, and the state of the national finances is most favorable.

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RUSSIA. — An event which was the occasion of general rejoicing throughout the empire was the birth on August 24 of an heir to the Russian throne. The Czarevitch was christened with the name of Alexis, and a decree was issued by the Czar determining the order of succession to the throne. In the event of the death of the Czar before the attainment by the Czarevitch of his majority, the Grand Duke Michael Alexandrovitch shall become regent and the Czarina guardian of the heir apparent. By another decree the Czar conferred various favors and privileges upon his subjects. The most important were the abolition of corporal punishment among the rural classes and its curtailment in the army and the navy; the remission of land purchase arrears due to the state, which benefits a large class of the population both of the empire and of Poland; an all-round reduction in terms of imprisonment for common-law offenses, the sentences of ordinary convicts being reduced one-half and life sentences to fourteen years; a general amnesty for all political offenses except murder; the setting apart of $1,500,000 from the state funds for the benefit of landless people in Finland; the remission of all fines imposed on the villages, towns or communes of Finland which failed to elect representatives or whose male inhabitants refused to serve on the military recruiting boards during the years 1902 and 1903; and permission to those Finns who left their country without the sanction of the authorities to return within a year. Fines imposed upon Jewish communes for avoidance of military service were likewise remitted and persons under arrest for various offenses were pardoned. These decrees were supplemented by the announcement of various promotions in the army, the navy and the civil service. — In further commemoration of the birth of the Czarevitch a sum of money was set aside from the imperial privy purse for the establishment of 100 scholarships in military and naval schools for the benefit of children of soldiers and sailors killed in the present war. Two million roubles were also set aside for the support of the families of such soldiers. — In September a decree was issued extending the privileges of residence to certain classes of Jews within the pale. A far reaching reform was embodied in a decree of July 11 which abolishes the system of condemning by administrative order persons charged with political offenses and secures to them trial in the courts. — The industrial and political outlook in Russia is most unfavorable. Widespread crop failures and general paralysis of industry have characterized the period under review. The general unrest has manifested itself in an unusual number of **political assassinations.** On July 28 M. von Plehve, minister of the interior and leader of the reactionary forces in Russia, was killed by the explosion of a bomb thrown at his carriage while he was driving to the railway station in St. Petersburg. The assassin was a young Russian named Lassoneff, of Polish ancestry, who had lived in Finland, and his crime was believed to be part of a widespread plot to murder various high government officials.

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After considerable difficulty in finding a suitable person the Czar appointed Prince Sviatopolk-Mirsky, governor-general of Vilna, as von Plehve's successor. On June 15 the governor-general of Finland, Count Bobrikoff, was murdered while entering the senate chamber at Helsingfors. The assassination was ascribed to the revolutionary spirit engendered by the governor's drastic policy in Finland. Prince John Obolensky, formerly governor of Kharkoff was appointed as his successor. Other political assassinations were the murder of the vice-governor of the province of Elizabethpol, of the chief administrator of the Surmalin district in the Caucasus and of the Russian minister to Switzerland. The assassination of von Plehve was followed by agitation for the creation of a responsible cabinet, but the proposed reform did not meet the approval of the Czar. Meantime the new minister of the interior has announced that his administration will be marked by important reforms. — The grave conditions in **Finland** have continued with but few signs of improvement. The Finnish senate on June 26 issued a manifesto expressing "deep indignation" at the assassination of the governor-general and proclaiming its "allegiance to the mighty Russian crown." On August 28 the Czar issued a ukase summoning the estates of Finland to meet in ordinary session at Helsingfors on December 6, 1904, and commanding the meeting of the Finnish diet in 1907. — To meet the expenses of the war with Japan the Russian government negotiated in May a five per cent loan of $160,000,000, which was taken by French investors, and a new loan of $50,000,000 has been announced. (For military operations and diplomatic incidents of the Russo-Japanese war, see above, INTERNATIONAL RELATIONS.)

AUSTRIA-HUNGARY. — **The Delegations** of the Austrian and Hungarian parliaments assembled at Budapest on May 14 to consider and adopt the common estimates for 1905. Considerable popular surprise was manifested at the unusually large demands for the army and the navy, the amount required being about $52,000,000. Of this amount more than $37,000,000 represented extraordinary estimates for the army and for new war vessels. The government declared its determination to increase the efficiency of the army and the navy and to bring them up to the level of modern requirements. Fortunately the financial condition of the dual monarchy is favorable, a large surplus being reported by the minister of finance. — The continued obstruction of the Czechs in the **Austrian parliament** prevented the carrying out of the government program (see last RECORD, p. 361) and the parliament was adjourned *sine die* early in May. In October the cabinet was reconstructed by Dr. von Kärber, a Czech being given a seat, an act calculated to obviate Czech obstruction in the next session of parliament. Among the ministers retired was Dr. von Bohm-Bawerk, minister of finance. The new **Hungarian Program** was announced by Count Apponyi in a recent speech. It demands, first, a separate Hungarian

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royal standard and an independent Hungarian court; second, an arrangement requiring the King and the royal heir together with the diplomatic representatives of foreign states to pass a part of each year on Hungarian soil; third, that the independent existence of Hungary be expressed in treaties with foreign states; and, fourth, that Hungarian officers be employed in the Hungarian army, that the Hungarian flag and coat of arms be introduced, that recruits be required to swear fidelity to the Hungarian constitution and that military orders be given in the Hungarian language. This last demand has been partially met by an imperial decree extending the use of the Hungarian language in the army. In the latter part of April occurred an **extensive strike** by the employees on the Hungarian government railways for the purpose of securing higher wages and better conditions of service. The government entered into negotiations with the strikers and practically conceded their demands. The strikers thereupon raised other demands. These were firmly refused and the government proceeded to adopt vigorous measures to end the strike. These were completely successful and the strike collapsed. — **Municipal elections in Vienna** occurred in August and resulted in an overwhelming victory for the anti-Semites.

MINOR EUROPEAN STATES. — In **Belgium** the chief event of political interest was the election of members of parliament in May. The results showed a gain for the opposition (Liberal) of five seats in the Chamber and two in the Senate. The main issue was the hostility of the Liberals to the growth of clerical influence, particularly in educational and political affairs. — In **Denmark** the most generally discussed question has been the proposal to incorporate a provision in the new criminal code legalizing corporal punishment for certain offenses. Laws were passed for making loans to peasants and for regulating the observance of holidays. Projects of law relating to civil marriage and for the extension of the suffrage failed of adoption. — In **Holland** parliamentary elections occurred in August and resulted in the triumph of the Conservatives, who were in the minority in the last parliament. The speech from the throne at the opening of parliament urged a new system of education, an old age insurance law and a modification of the law of limited partnerships. A government bill which proposed to grant holders of diplomas issued by private sectarian universities the same rights and privileges as are granted to graduates of state institutions was defeated in the upper chamber in consequence of the opposition of the entire Left. — **Norway and Sweden** were concerned chiefly with the problem of insuring their own neutrality in the event of the extension of the Russo-Japanese war to Europe. The Norwegian government decided to establish an important naval base on the northern coast of Norway, the site to be strongly fortified. At the opening of the Norwegian Storthing in October the King announced a bill to revise the customs tariff with a view to the protection of labor. Other note-

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worthy matters were the enactment by the Swedish parliament of a new homestead law which sets apart a large fund to be loaned to agricultural laborers for the purchase of lands, and the recrudescence of an old boundary dispute between the two countries which has been aggravated by a fisheries dispute. — In the politics of **Portugal** the chief event was the resignation, in October, of the cabinet in consequence of the refusal of the king to adjourn Parliament. — In **Greece** parliament was dissolved in October. — In **Servia**, Peter Karageorgevitch, was solemnly crowned on September 21. — From the region of the **Balkans** come the usual reports of disturbances and atrocities. Ottoman troops have annihilated bands of Bulgarian insurgents and these have in turn pillaged and devastated the surrounding country. Friction developed between the Ottoman government and the governments of Austria and of Russia relative to the execution of the Austro-Russian reform scheme (see last RECORD, p. 355). The difficulty arose over the opposition of the Porte to the demand of the Austrian and Russian governments for an increase in the number of the foreign officers of the *gendarmerie*.

V. ASIA AND AFRICA.

ASIA. — In June reports of wholesale **Turkish massacres of Armenians** in the Sassoun district reached the outside world. It was asserted that whole villages had been destroyed and thousands of persons put to death by the Turkish soldiery. According to a statement made by M. Delcassé, June 9, in the French Chamber of Deputies, the Porte was informed that the time for repression had passed and that the French government would hold Turkey responsible for the atrocities. — **In China** a recrudescence of the **Boxer movement** occurred in the provinces of Shantung and Pechili. Many missionaries were compelled to flee for their lives. On the occasion of the seventieth birthday of the dowager empress an edict was issued pardoning, with three exceptions, all persons connected with the reform movemant of 1898. In consequence of the distressed conditions prevailing in Manchuria and Kwangsi, a decree was issued commanding viceroys and other high officials to abstain from sending presents to the empress. Another decree referred to the straitened condition of the finances and ordered the abolition of various offices and posts in the provinces. Still another decree ordered an inquiry into the slipshod method of collecting the **land tax**. By an imperial edict of May 18 the ports of Chinanfu, Weishien and Chantsun on the Shuntung peninsula were opened to the commerce of the world. In June it was announced that the government of the Chinese Empire had become a signatory to the Geneva Red Cross Convention and that the empress had subscribed 100,000 taels for the benefit of the Red Cross society. — To meet the expenses of the war with Russia the government of Japan raised two loans of $50,000,000 each, one of

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which was taken in New York and London at six per cent interest, while the other was a domestic loan bearing interest at five per cent. Late in September it was announced that a new domestic loan of $40,000,000 at five per cent had been decided upon.

AFRICA. — An event which has caused general regret in all the British colonies of South Africa was the resignation in October of Lord Milner, high commissioner since 1897. — **The Cape Colony** government was defeated, May 23, on a proposition for a reduction of the estimates. Legislative measures enacted were: a bill to exclude Chinese indentured labor; an act to provide for the better administration of justice and an act to regulate the sale of firearms and ammunition. The colonial revenues for the fiscal year ending June 30 amounted to £9,910,000 and the expenditures £10,849,000. — In the **Transvaal** interest has centered chiefly in the experiments with Chinese labor in the mines of the Rand. Many thousand Chinese laborers have been introduced since the enactment of the labor ordinance in January (see last RECORD, p. 367). Elaborate regulations were promulgated in April for enforcing the conditions prescribed in the labor ordinance and in the Anglo-Chinese convention regarding the introduction of coolies into the Transvaal. It has been decided (see GREAT BRITAIN) that an elective element shall be introduced into the Legislative Council of the Transvaal. — In April the British secretary of state for war announced in the House of Commons that in view of the defeat of the Mad Mullah and his flight into Italian territory the government had decided to discontinue military operations in **Somaliland**. Shortly thereafter it was reported that the Mad Mullah was again on the war path with 6,000 followers well supplied with ammunition and transport. — The rebellion of the Herreros in **German South West Africa** (see last RECORD, p. 367) continued throughout the early summer to tax the energies of the German authorities. In May Lieutenant General von Trotha was sent to take command of the German forces, amounting to some 10,000 men in this quarter, and on August 11 he broke the back of the rebellion in an all day battle with 6,000 natives at Hamarkari. The Herrero leaders were killed, and thousands of their cattle were captured or dispersed. Five German officers and nineteen men were killed. — From the **Congo Free State** have come reports of revolting cruelties practised on the natives by white officials and others. British sentiment in particular has been aroused and the "Congo atrocities" occupied a prominent part in the debates of Parliament throughout the summer. In August it was announced that the Belgian government had appointed a commission of three judges, two Belgian and one foreign, to conduct an exhaustive investigation into the condition of affairs in the Congo State.

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